THE UNIVERSITY OF ALBERTA

THE WOMEN'S MOVEMENT IN ALBERTA
AS SEEN THROUGH
THE CAMPAIGN FOR DOWER RIGHTS
1909 - 1928

by

© Catherine Anne Cavanaugh

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled The Women's Movement in Alberta as Seen Through the Campaign for Dower Rights 1909 - 1928 submitted by Catherine Anne Cavanaugh in partial fulfilment of the requirements for the degree of Master of Arts.

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Abstract

The women's movement in Alberta began with a campaign for reform of property laws. Property rights were of particular concern to pioneering women who worked side by side with men in developing the West but were denied the products of their labour during marriage. As a result of sexually discriminating rules of law, most married women were wholly dependent on their husbands for their economic well-being. In the event of their husband's death, or following separation, farmers' wives and their dependent children frequently faced extreme hardship or, in some cases, destitution.

In response to the plight of married women on the Canadian prairies, feminists called for legislation restoring the wife's traditional dower rights in her deceased husband's estate and a guaranteed interest in family property during her husband's lifetime. From 1913 to 1917 feminists' activities in Alberta focused on the struggle for female suffrage but women never lost sight of the issue of reform of property laws. Indeed, in the minds of most Western suffragists the two goals were intimately linked. They believed that female suffrage was only a prelude to better laws for the protection of women and children.

The achievement of dower legislation in 1917 did not signal an end to women's struggle for legal recognition of the

matrimonial partnership. Disillusioned with the limited provisions of the Act, and the narrow interpretation placed on it by the courts, women continued to press for more radical reforms. This second stage in the campaign for dower rights gave rise to demands for community of property legislation granting a more equitable division of property acquired by wife and husband during marriage.

The campaign for dower rights, being waged in all three prairie provinces, was spearheaded in Alberta by the Women's Christian Temperance Union and Local Councils of Women of Canada. As the number of provincial women's clubs and associations grew many joined in the struggle to secure a right to the wife in family property. In 1916, when the United Farm Women of Alberta won independence as an autonomous farm women's organization, rural women took the lead in the debate over married women's property rights.

With the assistance of Irene Parlby, Minister without Portfolio in the United Farmers' Government, farm women finally succeeded in bringing a community of property bill before the provincial legislature in 1925. However, in 1928 the special committee appointed to investigate provincial laws concerning married women's property rights recommended against its adoption and the bill was defeated. It would take another forty-six years before married women in Alberta achieved an equal share in family property - and then only after yet another farmer's wife, Iris Murdoch, failed in her claim to share in the value of the farm which she had helped to build.

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Abbreviations

Archives

CEA	City of Edmonton Archives
Glenbow	Glenbow-Alberta Institute Archives
PAA	Provincial Archives of Alberta

Law Journals

Am. J. Comp. L.	American Journal of Comparative Law
Alta. L. Rev.	Alberta Law Review
Harv. L. Rev.	Harvard Law Review
Osgoode Hall L. J.	Osgoode Hall Law Journal

Law Reports

Alta. L. R.	Alberta Law Reports
C.P.	Common Pleas
Cl. & Fin.	Clark & Finelly, English Reports
Dowl.	A. Dowling, Reports of Cases Argued and Determined in the Queen's Bench Practice Courts
T.L.R.	Times Law Reports
W.W.R.	Western Weekly Reports

Statutes

S.A.	Statutes of Alberta
S.C.	Statutes of Canada

Ordinances

C.O.	Consolidated Ordinances of the North West Territories

Introduction

This study began with questions concerning the nature of the women's movement in Alberta and the extent to which the highly successful campaign to win the vote for women is respresentative of success in achieving other reforms. If, as has been argued, the achievement of female suffrage was largely due to the unique partnership that existed between pioneering women and men in the Canadian West, the pattern of easy victory ought to be repeated in other areas of reforms for women. In order to test this hypothesis, an enquiry into the campaign for married women's dower rights seemed particularly appropriate since its aim was a more equitable sharing of the products of the pioneering partnership, that is, the recognition in law of the wife's interest in family property. The purpose of this study, then, is to shift the focus of enquiry from suffrage to the reform of property rights in order to gain a broader view of feminists' activities in Alberta during the first decades of this century.

The women's rights movement of the late nineteenth and early twentieth centuries was based on a wide-ranging programme of political, legal, social and economic reforms aimed at improving the condition of women. Many feminists saw woman suffrage as the means by which their larger goal, of full and equal citizenship guaranteed in law, might be achieved. Yet, the campaign to win votes for women has been allowed to dominate the history of the Canadian women's movement.

This distortion of emphasis has sometimes led to a narrow interpretation of women's political aims and has contributed to a view of the movement in Western Canada as peaceful, popular and short. Indeed, Catherine L. Cleverdon, the first historian to study the woman's suffrage movement in Canada, commenting on the campaign in Alberta and Saskatchewan, states that in the newest of the provinces "it was only necessary to arouse enough general interest in the issue to ask for and receive the franchise".[1]

According to Cleverdon democracy triumphed on the Canadian prairies, as it did in the Western United States, because men were quick to recognize the important contribution women had made to the settlement of the West and were therefore more willing to grant women a greater share of political power.[2] In his introduction to a recent edition of Cleverdon's book, Ramsay Cook reiterates this theme, linking farmer's support for female suffrage to women's "role as equal partner in pioneering conditions" which made it difficult for their husbands to "fall back on the argument of the different spheres".[3] Other supporters of the "frontier thesis" point to the early endorsement of woman suffrage by such powerful, male dominated organizations as the Grain Growers of Manitoba and Saskatchewan and the United Farmers of Alberta-as evidence of greater sympathy in the West, than existed in the East, toward women's political demands .

While it is clear from their own writings and memoirs that pioneer women understood the importance of their contribution to the opening of the West, there is no evidence that women's equal work inevitably led to greater political equality between the sexes - even on the frontier.[4]

A more plausible explanation for the alliance between farmers and suffragists in the West is offered by Paul Voisey and Carol Bacchi, who suggest that shared social, economic and moral reform objectives formed the basis for co-operation between rural feminists and Western progressives.[5] Bacchi argues that this happy partnership helped to increase the political consciousness of farm women and provided them with an alternative for radical social criticism.[6] As a result, Veronica Strong-Boag, sees the emergence of "another brand of female reformer" on the prairies whose roots lay in the agrarian reform movement and who was more critical of existing social and economic structures than her Eastern, middle-class counterpart.[7]

Although historians are beginning to challenge the theory of frontier-as-equalizer, debate concerning the women's movement in Western Canada continues to focus on the campaign for female suffrage. If, however, we turn our attention to the prolonged struggle for legislative dower in Alberta, a very different picture of the women's movement in that province emerges; one that not only further exposes the weaknesses of the notion of frontier democracy in Canada but also raises fundamental questions concerning family relations to reveal patriarchy preserved on the prairies.

From the opening debate over dower rights in 1909, which marked the first stirrings of a women's rights movement in Alberta, through nineteen years of continuous, often heated campaigning, feminists fought for the protection of married women and greater personal control over their future through the guarantee of a clearly defined interest in law in family property.

In order to provide a background against which the campaign for married women's dower rights in Alberta can be seen in perspective, a brief discussion of the evolution of the law as it concerns the married woman is provided in chapter one. Particular emphasis is placed on the status of women in relation to property rights during marriage. The impact of legal traditions on the position of women in turn-of-the-century Alberta is discussed in chapter two, together with an examination of the first stages of the fight for homestead dower beginning in 1909. The achievement of dower legislation in 1917 and its consequences in Alberta is explored in chapter three, along with a discussion of the changing nature of the debate over the married woman's claim to a share in family property. By the mid-1920s the campaign for homestead dower had led to demands for a more equitable sharing of family assets acquired by the joint efforts of both spouses. In order to facilitate this debate the government appointed a committee to investigate provincial legislation as it concerned the married woman's property rights. Chapter four deals with the committee and its enquiry into community of property which led to the defeat of the partnership principle in Alberta in 1928.

> Marriage is the only actual bondage known to our law. There remain no legal slaves except the mistress of every house.
>
> John Stuart Mill,
> The Subjugation of Women.[1]

Chapter 1

The Married Woman And The Law: An Historical Perspective

As a tool of public policy the law has historically been used to maintain and enforce traditional sex/gender roles, perpetuating what one writer describes as "the oldest most firmly entrenched caste system known to Western civilization".[2] Rules of law that discriminate on the basis of sex alone have imposed severe disabilities on women and the married woman in particular.[3] Although more than a century of women's reform activities, together with an increased concern for individual rights, has led to the gradual dismantling of a legal regime which, for hundreds of years, deprived a woman of her rights in law during marriage and enforced a wife's complete obedience to her husband, vestiges of the old rules remain to this day.[4]

The cultural origins of the subordination of women are ancient and complex and probably had their genesis in prehistoric times.[5] However, the codification of social relations placed established cultural practices on a legal foundation adding the weight and authority of law to sex based inequality. The philosophical justification for laws that discriminated on the basis of sex alone was rooted in the traditional belief in the "natural inferiority of women".[6]

In spite of even the most oppressive sexually discriminating rules of law, individual women have actively participated in the lives of their communities in every age for there has always been a significant gap between accepted theory and acknowledged practice.[7] Moreover, laws concerning women have changed over the centuries to reflect developments and shifts in attitude.[8] As will be shown, in some cases change brought beneficial protections for women, but such intervention was typically paternalistic in intention and did not significantly alter women's subordinate legal status.[9] This is particularly true of the married woman who upon betrothal underwent a form of "civil death".[10]

The theoretical basis for a woman's loss of legal personality through marriage has its antecedents in ancient Greece and Rome and the tradition of the "Perpetual Tutelage of Women".[11] Following this custom, a woman was defined as a minor who never grew up and was subject to the absolute authority of the male head of her household for her lifetime. This was literally so for Greek women who did not pass, upon marriage, under the guardianship of their husbands. The Greeks believed the family to be "inextinguishable" and women, therefore, remained members of their biological family and under the power of their father or nearest agnate.[12]

The position of women in ancient Greece has, with reason, been compared to that of slaves with the exception that women could not be emancipated.[13] In this most male of societies, a woman could not hold citizenship, she had no political rights or legal capacity and, as subject of her guardian who in earliest times held life-and-death powers over her, a woman was not free to dispose of her own person in marriage.[14]

Ancient Greek law defined women's function as primarily utilitarian.[15] Isolated within the gynaeceum, or women's quarters, and deprived of a public existence, women were expected to provide male heirs for the preservation of the family and its religious cult. Failing this, women themselves could serve as conduits for family wealth. The law provided that a daughter could inherit property but, unlike her brothers, she held it only until such time as her son reached the age of majority when he then "entered into possession of the estate" and paid "alimony" to his mother.[16]

The religious function of the family, on the other hand, could only pass through the male line. Thus, if the head of a Greek household died without a surviving son, his successor had a duty to marry his heiress and to "sleep with her at least three times a month".[17] Isaeus, a contemporary observer, states that this legal requirement often led to a competition for wealthy heiresses and it "frequently happened that husbands [were] deprived of their wives in this manner".[18] Such forced unions do not seem to have been universally practiced however. In Crete, for instance, an heiress could refuse to marry her next-of-kin if she agreed to divide her inheritance with him.[19]

Although a Greek woman could hold property during her lifetime, as a legal minor she was prohibited from disposing of it by will. On this point, Isaeus writes, the law was quite clear for it "expressly forbids any child - or woman - to contract for more than a bushel of barley".[20]

The tradition of the Perpetual Tutelage of Women was formalized under Roman law which, until the end of the Punic Wars in the second century B.C., maintained a strictly patriarchal family structure. During the earliest period the male head of the household, the _pater familias_, held absolute power over the life and property of all family members.[21] Under the Late Empire, the _patria potestas_, or power of the father, was considerably eroded as his authority came to be seen less as a gift from the gods then a concession of civil authority.[22] As a result, his dependents, including his wife, received greater rights and freedoms.[23]

In Roman law a woman was said to be _in manus_, or living under the hand of her father.[24] Following marriage she was "born again" into her bridegroom's _gens_, or house, and became the "daughter of her husband" who assumed authority over her.[25] By the third century B.C. the institution of _manus_ had fallen into disuse and a form of marriage which allowed the bride to remain under her father's rule was recognized in law. Known as "free marriage", these unions were probably created in an attempt to prevent patrician property from falling into plebian hands as a result of mixed marriages.[26] As the practice of free marriage became increasingly common, it was also a means by which women achieved a degree of emancipation. A woman who was not living under the absolute power of her husband could obtain a divorce and following her father's death, could become her own mistress, or _sui juris_.[27] She still required a guardian to administer her property but, according to Gaius, a contemporary observer, in most cases this was a mere formality and "women of full age transact[ed] their own affairs".[28]

Even under the less rigid rules of the Late Empire Roman women were without political or civil rights. They were barred from holding public office and could not give evidence in court. While inheritance laws no longer discriminated on the basis of sex alone, a married woman who had failed to produce a male heir could not receive "more than one-tenth of her husband's estate".[29] However, women had benefited from a general relaxation in family law and a married woman of wealth could exercise a great deal of personal and economic freedom provided her moral behavior was beyond reproach.[30]

Despite the improvements in married women's legal status during the Late Empire, some of the more stringent aspects of the ancient rules were incorporated into Canon Law and through it passed to the English Common Law.[31] It is in the common law that traditional sex roles were most clearly defined. Indeed, marital law was so specific it led E.T., author of *The Law's Resolutions of Women's Rights*, published in 1632, to conclude that at common law "[a]ll [women] are understood either married or to be married, and their desires are subject to their husbands".[32]

At common law all women were subject to the most oppressive sexual discrimination in the area of public law. According to the anonymous author of *The Law's Resolutions on Women's Rights*, as heirs to Eve's transgressions, "women [had] no voice in Parliament, they [made] no laws, they abrogat[ed] none".[33] Laws excluding women from the public sphere were well established in England by the thirteenth century with the result that "[i]n the camp, at the council board, on the bench, in the jury box" there was no place for them.[34]

In the area of private law, however, a single woman or widow, a *feme sole*, had almost the same rights as a single man.[35] Except where she was disqualified by primogeniture for as long as it prevailed in England,[36] she could inherit property and hold land "even by military tenure . . . own chattels, make a will, make a contract. . .sue and be sued".[37] If she were not under age, a single woman could manage and control her own lands and property and retain all revenues arising from them. Following marriage a woman became subject to her husband. Her rights in private law were lost or suspended and her personal freedom severely limited.

The theoretical justification for the suspension of a woman's legal existence during marriage was the feudal doctrine of coverture which continued the legal concept of the married woman as a perpetual minor. In The Laws Resolutions of Women's Rights, E.T. states that at common law "every Feme Covert [married woman] is a sort of infant . . . her husband is her stern, prime mover, without whom she cannot do much at home, and less abroad".[38] This is also the view of a more modern authority on the common law which argues that "the main idea which governs the law of husband and wife is . . . that of the guardianship, the mund, the profitable guardianship, which the husband has over the wife and over her property".[39]

The notion that the husband's guardianship resulted in the loss of his wife's legal personality was given full expression by Sir William Blackstone, writing in the 1760s. In his influential Commentaries on the Laws of England Blackstone states that:[40]

> By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection and cover, she performs everything . . . [she] is said to be covert-baron, or under the protection and influence of her husband, her baron or lord; and her condition during her marriage is called her coverture. Upon this principle of a union of person in husband and wife, depend almost all the legal rights and duties and disabilities, that either of them acquire by the marriage.

Based in part on biblical notions of unity of flesh of husband and wife,[41] the doctrine of coverture has been more candidly described in modern times as resting "on the old common law fiction that the husband and wife are one . . . [which] has worked out in reality to mean . . . the one is the husband".[42]

As a result of the doctrine of coverture or the unity of husband and wife, a married woman:[43]

> owed complete obedience to her husband; he had the right to her absolute fidelity, to her society and to her services[44] . . . . His domicil became her domicil and her marriage vow laid upon her the duty to reside with him wherever he might choose to live. Her property, with a few partial exceptions, became his property and over the children of their marriage his rights were absolute.[45] A Woman, in law, belonged to the man she married; she was his chattel.

A married man, in turn, was responsible for providing his wife and children with adequate maintenance and the protection of his home.[46]

The rights and duties of husband and wife at common law, while reciprocal, were by no means equal. For instance, a married woman who deserted her husband without sufficient cause, or who was guilty of adultery without her husband's consent, automatically forfeited her marital rights but a deserting husband remained in possession his wife's property and the children of their marriage.[46] Nor did her husband's desertion absolve a married woman from her duties as a wife. Except in the case of desertion with cruelty, she could be compelled under threat of imprisonment to return to his bed and board.[48]

While both husband and wife could sue for the restitution of conjugal rights, the limitations imposed on her legal capacity raised doubts as to the wife's ability to act without her husband.[49] He, on the other hand, had the right to sue and to claim damages from anyone responsible for depriving him of his wife's services and society.[50] The wife had no right to be represented in such proceedings although her reputation and economic future frequently rested on the outcome.[51]

This same double standard discriminated against married women in matters of divorce and judicial separation. In law her misconduct was held to be a more heinous crime than her husband's.[52] Thus, a wife's infidelity was considered sufficient grounds for desertion by her husband while the court held that "nothing but actual terror and violence" could justify similar action by the wife.[53]

The implications of divorce were also more disastrous for women who had forfeited both their legal rights and property as a result of marriage. In the view of one Lord Chancellor a divorced woman was placed:[54]

> in a state of outlawry. . .homeless, helpless, hopeless and almost destitute of civil rights. She is liable to all manner of injustice . . . [and] may be wronged in all possible ways, and her character may be mercilessly defamed; yet she has no redress.

Furthermore, the supremacy of the husband over the wife extended to his right to interfere with her personal freedom and as late as 1840 the Court of Chancery upheld the husband's common law right to physically restrain her. In his judgement in R. v. Cochrane, Mr. Justice Coleridge stated that "[a] husband had the right to be excused [for having confined his wife] . . . if he felt uneasy when he learned that she had gone to masked balls at Paris with persons whom he did not know".[54] Quoting Bacon on the common law concerning husband and wife, Coleridge concluded that:[56]

> [f]or the happiness and the honour of both parties [the law] places the wife under the guardianship of

> the husband, and entitles him, for the sake of both, to protect her from the danger of unrestrained intercourse with the world by enforcing cohabitation and a common residence.

It was Bacon's view that the law granted a man absolute "power and dominion over his wife" including the right to "beat her, but not in a violent or cruel manner . . . and may, if he think fit, confine her, but he must not imprison her".[57] Following Bacon, legal opinion held that where he was justified by his wife's misconduct "it is lawful for the husband, in order to preserve his honour and estate, to lay such a wife under restraint"[58] although, in 1852, it was decided that "a husband had no such right at common law to the custody of his wife as a parent has to the custody of a child".[59]

The presumption in common law that a married woman could not act without her husband's consent also gave rise to a number of peculiar provisions in criminal law. For instance, a married woman could not be held responsible for illegal acts committed in the presence of her husband, although this presumption of coercion did not apply to murder or treason or to prostitution or brothel keeping; the latter being "such an offence as the law presumes to be generally conducted by the intrigues of the female sex."[60]

Moreover, the principle of the unity of husband and wife provided the rule that a married woman could not be an accessory after the fact, except in the case of murder or treason, since she had a duty to aid and protect her husband.[61] In addition, coverture prevented a husband or wife from being charged with the theft of each other's property or with conspiracy since "a conspiracy required two conspirators and they together formed but one".[62]

Following from the principle of unity of husband and wife, a married woman also lost control and management of her real property to her husband who was free to use and, in some cases, even dispose of it as he saw fit.[63] All rents and monies arising out of the married woman's property belonged to her husband although he could not alienate them.[64] Any chattels she brought to the marriage or acquired later became her husband's property absolutely as did her personal property, her paraphernalia.[65]

The rules of common law did grant a married woman possession of "pin-money" which took the form of an allowance, usually as part of her marriage settlement, but in the words of one Lord Chancellor, a married woman's pin-money was "meant to dress the wife so as to keep up the dignity of the husband".[66] All savings out of pin-money belonged to the husband.[67]

In addition, a married woman lost her power to transfer her real property.[68] She could not contract with her husband nor with a third person.[69] She could be sued only if she was joined in the action by her husband, and husband and wife could not sue each other.[70] Even her power to serve as trustee or executrix was limited in that her husband was deemed liable for her breaches in trust.[71]

Marriage, under the common law, has been described as "an assignment of a woman's property rights to her husband, at any rate during coverture".[72] Partly in consideration of the married woman's loss of property to her husband he was required in law to provide her with the "necessaries" of life.[73] As a result, at common law a married woman was presumed to have her husband's authority to pledge his credit for household goods; even against his will.[74] "It is clear", Bacon states, "that a husband may by law be compelled to find her necessaries, as meat, drink, clothes, physics etc. . . . ".[75] However, the courts tended to place a narrow interpretation on the married woman's right to act as her husband's agent and from an early date it was held that the husband alone had the power to set household standards. In 1672 Mr. Justice Hyde found that:[76]

> The wife will have a velvet gown and a satin petticoat, and the husband thinks mohair or farendon for a gown and watered tabby for a petticoat is as fashionable and fitter for his quality . . . . Of absolute necessity in the case of apparel or food the law of the land . . . makes no person judge thereof but the husband himself.

During the nineteenth century "necessaries" were broadly defined as:[77]

> things that are really necessary and suitable to the style in which the husband chooses to live, in so far as the articles fall fairly within the domestic department which is ordinarily confined to the management of the wife.

Thus, in reality the married woman who was living with her husband had the power to act only as agent of her husband's will[78] and she had "almost no remedy to enforce her right to support except her personal persuasiveness".[79]

As an extension of her right to maintenance during coverture the rules of common law further provided the married woman with certain rights to economic protection following her husband's death. Known as the wife's "dower", these rights pre-date the Norman conquest and were recognized in the Magna Carta by a special clause added in 1217.[80] By this time the earlier indefinite right of the widow to remain in her husband's home after his death had solidified into specific, absolute rights, usually in the form of property.[81] From the twelfth and thirteenth centuries it was recognized throughout England "that every man was bound by ecclesiastical and temporal law to endow his wife at the time of the wedding" but legal opinion generally held that "dower arose in consequence of the bounty of the husband".[82]

In its final evolved form common law dower was reduced from an absolute property right to the married woman's interest for her lifetime only, in one-third of her deceased husband's free-hold estates which he had held at any time during the marriage.[83] This dower interest arose at the time of marriage, existing as an inchoate right which was consummated following the death of the husband. It attached to the lands and thus could not be defeated by sale or dispostion by will without the wife's consent.[84] If there were no lands the married woman was entitled to a dower interest in her husband's "town house" but under certain circumstances she could be compelled by his heirs to accept a "suitable maintenance" instead.[85] In addition to her estate in lands, the widow could claim a "dower house" to be built for her or designated for her own use.[86]

As far as it went common law dower did provide a measure of security to the widow. It did not however, include chattels (furniture, farm equipment, animals and the like).[87] Thus, dower offered little by way of protection of the widow's livelihood or at least seriously limited her capacity to provide for herself and her dependent children in the event of her husband's death.

As with the wife's right to maintenance, her dower right was contingent on her good behaviour.[88] Both lay and ecclesiastical courts held the view that a married woman's misconduct should be punished by loss of property.[89] Thus, the adulterous wife forfeited her claim to dower unless her husband voluntarily took her back before his death.[90] A married woman also lost her dower rights if the marriage was dissolved.[91]

The significant protection provided by dower lay in the fact that it survived dispostion by will or by sale where consent had not been obtained.[92] This feature of dower interfered with a married man's ability to dispose of his lands since it cast doubt on the title by ensuring that the widow's claim took priority over any other. During the nineteenth century this very feature was defeated by statute in favour of greater freedom of property alienation.[93]

Furthermore, while the first Dower Act, passed in England in 1833, extended the married woman's claim to include her husband's equitable as well as his legal estates, it also reduced her interest to lands held by her husband at the time of his death rather than those he had held at any time during the marriage.[94] The Act further stated that "no widow shall be entitled to dower out of any lands which shall have been disposed of by her husband in his lifetime or by will".[95] In other words, her husband was free to dispose of his lands as he saw fit and her dower right was automatically defeated by such a disposition. Under these new provisions dower had become an illusory protection since it was made contingent upon the husband not depleting the estate during his lifetime or by will.

The position of the married woman at common law was consistent with the accepted view of her sex as by nature impulsive, fickle and indiscreet. Thus, Blackstone could argue that:[96]

> even the disabilities, which the wife lies under, are for the most part intended for her protection and benefit. So great a favorite is the female sex of the laws of England.

In writing his Commentaries, which became a standard legal text following its publication in 1769, Blackstone chose to ignore improvements in the law as it concerned the married woman's property and, to a more limited extent, her power to contract.[97] During the latter part of the sixteenth century the Court of Chancery had developed a device by which a married woman could hold property "for her sole and separate use" free from her husband's control.[98] Over time, this device which relied on the concept of trust, evolved into the institution of a "wife's separate equitable estate".[99]

Intended to alleviate the rigor of the common law, the wife's separate equitable estate arose either by agreement between husband and wife in which case the husband held his wife's property as trustee, or as a result of the court's intervention.[101] At common law a husband had the right to reduce any rents or monies owing to his wife, her choses in action, into possession and thereby under his exclusive control.[101] In order to do so, however, it was often necessary that he appeal to the Court of Chancery. Acting on the principle that "he who seeks equity must do equity", the court could refuse his right until the husband agreed to provide sufficently for his wife and children.[102] Although a claim of this kind relied on the husband's application, a wife could take the initiative in asserting her right to her "equity to a settlement".[103]

The wife's separate equitable estate created an important precedent in recognizing a married woman's capacity to hold property apart from her husband; however, it did have serious shortcomings. Developed in part to protect family property from falling into the hands of an undeserving husband,[103] the wife's separate equitable estate offered little relief to poor or uneducated women.[105] In addition, if a husband was able to reduce his wife's choses in action without resorting to a court of equity, there was no means to ensure an appropriate settlement for his wife and children.

Equitable remedies, as far as they went, did offer a measure of protection against the harsh rules of common law but their impact was seriously weakened by the invention of "restraints upon anticipation".[106] Intended to protect the married woman from "her own weakness and her husband's extravagance or rapacity", this provision prohibited a married woman from alienating or in any way encumbering her separate property during coverture.[107] In fact, the restraint was a double disability since it prevented a married woman from exercising her power to contract, which, as established under the rules of equity, created a proprietary and not a personal liablity.[108] Nevertheless, the doctrine of separate use did place financial resources into the hands of some married women and beyond their husband's control.

During the first half of the nineteenth century the growth of capital and industry, an expanding middle class and the spread of urbanization brought far-reaching social and economic changes which had a direct impact on women and the family. The factory revolution and access to education opened up new opportunities to women for work outside the home for wages. At the same time changing attitudes towards the individual's right to operate unfettered in the market place led to growing dissatisfaction with the existing rules of law that discriminated against the married woman's property.[109] In the struggle to secure equal property rights for the married woman reformers looked to the example of equity, arguing that "the common law should be entirely superseded and the principles of Equity generally adopted".[110]

The first property concessions made to the married woman during the Victorian era appeared under what is known as The Malins' Act of 1857.[111] In the same year The Divorce and Matrimonial Causes Act, granted a separated woman the same property rights as her single sister.[112] The Act further provided that a woman who had been deserted by her husband could apply to the court for an order to "protect any money or property she may acquire by her own lawful industry or property which she might become possessed of after such desertion".[113]

During the 1860s the campaign for legal reforms for women intensified and in 1870 the British parliament passed the first in a series of acts which attempted "to place the law governing the property of the married woman on a just foundation".[114]

The initial Married Women's Property Act was a pale version of the original bill which had sought to extend to the married woman the same property rights enjoyed by "unmarried women".[115] Dramatically reduced by the House of Lords and the Select Committee, the Act in its final form merely classified specific property, primarily a wife's earnings, including rents and profits arising out of her freehold estates, and savings, as her separate property.[116] It also limited a married daughter's inheritance by will to a maximum of 200 pounds, with the remainder to go to her husband except if her father died intestate.[117] Any property belonging to a married woman which was not mentioned in the Act continued to vest in her husband according to the rules of common law.

The Act of 1870 has been described as "an astounding example of class distinction" since it did not allow "the wives of ordinary men . . . the power to deal with their property which the wives of peers and other wives with settled capital received under their settlements".[118] It was condemned by feminists of the day as "a compromise" containing "no principles at all".[119] The "fuller and more complete measures" sought by reformers were finally achieved in 1882 when Parliament, under pressure from individuals and organizations, provided to all married women what equity had given to those with a settlement.[120]

The effect of the new Act was to place the married woman on an equal or near equal footing with her husband as regards property. It provided that with the commencement of the Act a married woman had the right to contract,[121] to be sued without being joined by her husband,[122] to manage and control any property she brought to the marriage,[123] and to retain as her statutory separate property any earnings or property gained by her in her separate employment or by the exercise of any "literary, artistic or scientific skill".[124] The Act further stated that:[125]

> A married woman shall. . .be capable of acquiring, holding and disposing by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a feme sole, without the intervention of any trustee.

Despite these considerable improvements to the married woman's property rights, the legislation did not signal the revolution in domestic relations anticipated by some.[126] Indeed, the new provisions did not apply to marriages which had taken place before the Act came into effect on January 1, 1883 and could be easily circumvented by settlements made before, during or after marriage.[127] Moreover, although the Acts abolished many of the proprietary disabilities imposed on married women under the common law, vestiges of the old rules remained. For instance, the doctrine of unity was preserved in the case of a gift of property between wife and husband and a third party; wife and husband as one received a half although half of that went to the wife as her separate property.[128]

In the short term, the courts, schooled under the old rule of male dominance, proved a further impediment to the emancipation of the married woman because they tended to interpret the new legislation in a "perversely, narrow spirit".[129]

To some extent the remedies provided by the Acts themselves encouraged English judges in their reluctance to change. When Shaw Lefevre introduced the first bill outlining a new property regime for married women in 1868, he alluded to the dilemma facing reform-minded legislators in England. In seeking to extend justice to the married woman the choice, as Lefevre pointed out, lay between "the exceptional provisions of Equity", which meant "eating into the principles of the Common Law itself but leaving that law still in the fundamental groundwork of the system", or abolishing the doctrine of coverture by granting "the married woman an absolute property in her own earnings, fortune and savings" as was enjoyed by single women and men.[130]

Lefevre and his supporters, who included John Stuart Mill, favoured the latter but Parliament was not prepared to go so far on behalf of the wife. It chose rather to eat into the principles of common law by providing the married woman with the exceptional protections of equity and thereby avoid any serious challenge to the "general dominion which the law of England attributes to the husband over the wife".[131] As a result, the newly acquired capacities of the married woman existed strictly in relation to her separate property and other areas of the law which discriminated against the married woman remained intact.[132]

The laws of England as of July 15, 1870 were received into Alberta on September 1, 1905.[133] During the territorial period the regulations governing marriage and family relations were based on a combination of English law as it was received into the Northwest Territories[134] and the modifications made by statute and judicial decision as interpreted by local magistrates.[135] As the population increased the Legislative Assembly of the Territories took a more active role in regulating social relations in the Northwest. However, apart from an ordinance passed in 1890 granting a married woman separate property as provided by the English statutes, marital law continued to be based on the old principles of common law and equity.[136] The doctrine of unity prevailed. Indeed, in many respects, traditional sex/gender roles had been even more narrowly defined by specific statute law passed in England during the nineteenth century.

In Alberta a married woman took her husband's name,[137] and nationality,[138] his home became her home,[139] and over the children of the marriage he was the sole parent.[140] Access to divorce had been broadened by English statute in 1857 but legal costs and judicial discretion continued to discriminate against the married woman.[141] Although the married woman had gained control over her separate property, both real and personal, she still had no rights in the matrimonial home held in her husband's name or in property or income acquired by joint labour with her husband. Indeed, following from the doctrine of coverture, her husband's propietary right to her services prevented a married woman from claiming any direct compensation for her domestic labour.[142] As a result, the pioneering woman who worked with her husband in building family assets was entirely dependent on him for her economic well-being. Furthermore, in the Canadian West the wife's common law right to a dower interest in one third of her deceased husband's estate was abolished by the Territories Real Property Act of 1886.[143]

As part of the Dominion Government's settlement policy for the Northwest Territories, the Act introduced a Torrens system of land registration.[144] Common law dower, which created an invisible encumbrance on the title, was held to be inconsistent with this attempt to rationalize land registration on the prairies and was, therefore, eliminated.[145] Hence, the widow was deprived of her traditional claim to her husband's estate, even though the extent of her claim had been greatly eroded in English law in 1833. Denied a right to family property and an interest in her husband's estate, a married woman and her dependent children were threatened with extreme hardship and even destitution in the event of her husband's prolonged absence or death.

This obvious injustice in the law was particularly offensive on the frontier where pioneering women laboured side by side with men in developing the West. It is hardly surprising then, that a women's movement emerged in Alberta over the issue of reform of property rights.[146] In 1909, shortly after the birth of the province, women began to call for the restoration of some form of the wife's traditional dower right which still existed in Eastern common law provinces. Other women, familiar with the civil law tradition of matrimonial community property in place in Quebec and some American States, sought legislation quaranteeing the wife an interest in family property during her husband's life. The initial campaign was led by the Women's Christian Temperance Union (W.C.T.U.), which had been active in the territories since 1893, and local chapters of the influential National Council of Women of Canada (N.C.W.C.). As the number of provincial women's clubs and associations grew, their voices too were joined in the call for better laws for the protection of women and children.

In their fight for a "fair deal" reformers faced centuries old legal traditions rooted in the ancient myth of "natural female inferiority". At the heart of the controversy over dower rights lay the thorny problem of sex/gender roles. The struggle for change was to be long and difficult.

> It is quite true that women have been the unpaid servants of men. What they receive of the good things they come by some man's bounty. Their claim is on the grounds of compassion.
>
> Nellie McClung
> Manuscript - Personal Papers.[1]

Chapter 2

"Homestead Dower": Home Protection As A Feminist Issue 1909 - 1917

The women's rights movement in Alberta began in 1909 with a campaign for reform of property laws. In particular, women called for equal rights with men to "free" homesteads on the frontier, and laws guaranteeing the married woman a "dower" interest in her husband's estate. By 1913, the intense campaign for equal homesteading privileges for women, being waged in all three prairie provinces, had met with little success and became bogged down in the question of federal-provincial jurisdiction over natural resources.[2] It continued sporadically until 1930 when Ottawa finally granted Alberta and Saskatchewan control over natural resources and crown lands.[3]

The struggle for dower rights, on the other hand, gained momentum. In part, it benefited from the fight for female suffrage which became the central focus of the provincial women's movement from 1913 until 1917 when women won the right to vote in Alberta. Legal reforms and votes for women were intimately linked in the minds of most suffragists who saw political rights as the necessary first step to winning legislation aimed at better protection for women and children.

Initiated in Manitoba in 1907, the campaign for dower rights was launched two years later in Alberta. In its early stages, the Alberta campaign was spearheaded by members of the provincial W.C.T.U., under the capable leadership of Louise Crummy McKinney, and the Local N.C.W.C. organized by Henrietta Muir Edwards. Shortly thereafter, other women's clubs and organizations joined the fight to secure the married woman a right in family property. These included a wide variety of women's social clubs, such prestigious civic associations as the Women's Canadian Club, the Canadian Women's Press Club, and the newly formed Women's University Club as well as rural women's organizations such as the Women's Institutes, formed under the auspices of the provincial government and popularly known as the "rural women's university", and the United Farm Women of Alberta, which took a leading role in the campaign to reform property rights after its formation as an independent women's association in 1916.

The outbreak of hostilities in Europe in August, 1914, saw an acceleration of the women's club movement with an increase in membership in existing organizations and the formation of new patriotic associations dedicated to war work. Although generally short-lived, organizations such as the Next-of-Kin

Association and the War Widows Association also supported the campaign for legal reforms. Part of a national and international movement dedicated to improving the condition of women, this rather diverse group of women shared a common faith in the special role of their sex in society.

When the women's rights movement emerged in Alberta during the early decades of the twentieth century, equal rights feminism had already surrendered to a conservative maternal feminism.[4] Early advocates of women's rights had based their claim on the "natural right" of women as human beings to equality under the law. Maternal feminists, while continuing to press for equal rights for women, emphasized the social benefits which female equality would bring to society. Maternal feminism was predicated on the conviction that the unique biological qualities which served women in the home and the family made them especially suited to intervene in the social and economic problems confronting the larger community. According to this view, women's moral superiority and special nurturing qualities made them more sensitive to social injustice and intuitively aware of social sin. Hence, it was felt that women were better equipped to clean up society. Far from challenging traditional sex roles, maternal feminists argued that women's special role as mothers gave them both a right and a duty to participate in the public sphere. In this sense second generation feminists saw equal rights not so much as leading to greater personal autonomy as a prelude to women entering the public sphere.

The initial debate over dower was conducted entirely within the parameters established by maternal feminism. Whereas fifty years earlier equal rights feminists in England had fought for and won separate property rights for the married woman on the same basis as men, maternal feminists sought the special protection of dower as a means of saving the family home against economic disaster and thereby, providing the married woman greater control over her future. Not until late in the campaign did women in Alberta begin to seek the equal economic status for married women advocated by an earlier generation of feminists.

In Alberta, maternal feminists' view of women as guardians of the home and a civilizing force on the frontier contributed a high moral tone to the controversy and an added sense of mission to the fight for home protection. However, beyond the rhetoric of maternal feminism lay a very practical concern for women at risk as a result of legal discrimination.

A separate rule of law that discriminated on the basis of sex alone imposed hardships on women which were compounded by a number of socio-economic factors that existed in Alberta during its early development. In the newest of the provinces land, and therefore wealth, was owned and controlled by men. Dominion homestead legislation excluded women from access to the "free farms" available to any male over eighteen.[5] Only if she were head of a household could a woman earn title to a quarter section of land by farming it. Under the terms of the Dominion Lands Act of 1872 homesteads could only be granted to women who were widows, divorcees, separated or deserted wives provided, that is, that they had children under the age of eighteen dependent on them for support.[6] Each application was scrupulously inspected and where there was doubt as to a woman's status as the sole head of a family, the Act gave full discretion to the minister to approve or reject it.[7]

Just as women in Alberta began to organize for equal homesteading privileges, Frank Oliver, Minister of the Interior in Wilfrid Laurier's Liberal Government, further limited the categories under which women could qualify for homesteads. In a memo dated January 24, 1910, Oliver directed that no entry for homestead land would be granted to:[8]

> a widow who is the legal guardian of a minor child, . . . [or] has an adopted minor child dependent on her for support except in cases where the adoption was a sufficiently long time prior to the application for entry to satisfy the Department that such adoption was not made for the mere purpose of making her eligible for homestead entry as the sole head of a family . . . [or] a widow who has a daughter over 21 years of age except it can be satisfactorily established that such daughter through physical infirmity is dependent for support upon the widowed mother, in which case it may be submitted to the minister for consideration.

That same year, Oliver demonstrated the kind of "consideration" he was prepared to give when he was asked to rule in the case of Mrs. Oxilia Grant, a widow whose daughter, though an adult, was an invalid and totally dependent on her mother for support. Grant's application was refused and returned along with "F.O."'s hastily scrawled reply "Not eligible. Daughter is not a minor".[9]

Despite prohibitions against women as homesteaders, some women did own and operate their own farms. According to one informal survey conducted by the woman's editor of a popular farm journal, twenty-one female farmers were operating in Alberta in 1916.[10] Although several of these women were widows, there is no record of how many had qualified under homestead legislation .[11]

Women could, of course, purchase land provided they had adequate funds or could convince their local banker to provide the necessary financing. The autobiography of the indomitable Georgina Binnie-Clark, English gentlewoman turned Saskatchewan grain grower, reveals the prejudice of western lending institutions as only one of the many obstacles encountered by women who chose to defy convention and pursue farming as an occupation.[12]

The remarkable success of Binnie-Clark and others like her might have been ample evidence that the "fair sex" could "prove-up" on homestead land as well as men but conventional wisdom insisted that farm work was "men's work".[13] The Minister of the Interior was only stating aloud what many people thought privately when he explained his government's refusal to extend equal homesteading privileges to women. Pressed on the matter in the House of Commons, Oliver stated that he:[14]

> did not think it would be in the best interests of the west to give women homesteads for the object of giving homesteads is to make the land productive, and this would not be the case if held by women.

Thus, by social convention and in law men were assured a virtual monopoly on farm land.

At the turn of the century Alberta was a predominantly rural, agricultural society which offered few economic opportunities outside of farming.[15] However, as the population increased, urban development opened jobs to women in what have since come to be seen as traditional areas of female employment. Women worked as teachers and nurses and in a variety of public and private service industries as clerks, bookkeepers, secretaries, telephone and telegraph operators.[16] Women were in high demand as domestic servants and skilled milliners and dressmakers. Some women found employment in factories like Great Western Garment of Edmonton and a few carved out successful careers in the professions, as doctors, lawyers, writers and newspaper editors. Others operated their own shops, boarding houses, and maternity homes.

Although women could and did support themselves, neither society nor the work-place had yet accommodated to working mothers. Few women continued to work outside the home for wages fol~~lowing marri~~age. For those who may have been so inclined the comparatively high wages available to men in the West probably served to encourage their wives to remain at home.[17] Certainly, as long as their husbands could provide adequate support there was little incentive for married women to seek "work out".

Statistics show that during the early decades of the twentieth century the vast majority of the adult females living in Alberta were married.[18] As wives and mothers they were wholly or largely dependent on their husbands for their economic well-being.[19] While it can be assumed that most married men provided for their families as their means allowed, many did not.

Scattered and incomplete records make it difficult to ascertain with any accuracy the extent to which married women suffered as a result of disinheritance, desertion or their husbands' penury. The evidence that does exist, however, suggests that abandonment and, to a lesser degree, neglect of wives and children were serious social problems encountered on the frontier.[20] Where they did occur, the economic consequences were exacerbated by severe climatic conditions, isolation and the absence of family.

After taking out a four hundred dollar mortgage on his farm, C. M. Howe of Radway Centre left his wife and three children without food or clothing "and cold weather at hand".[21] When Fred C. Clark of Dewberry abandoned his family in 1916, they faced the winter with only three dollars and ninety cents.[22] A young Edmonton mother with four children under the age of seven years appealed to Emily Murphy for assistance as she had "no mother nor anyone" she could turn to.[23] Her husband had refused to provide for their eldest child to attend school and the previous winter she and her children had suffered severely:[24]

> [They] nearly froze and starved to death . . . going without winter underwear or shoes part of the time . . . . [They] had no blankets . . . and had to sleep with [their] clothing on . . . the little ones [going] many a night without food.

The young woman candidly confessed fearing that if she remained with her husband yet "another little one will be brought into the world" - an apprehension she must have shared with other women in similar circumstances.[25]

Desertion frequently meant that unskilled women were forced to seek domestic labour in other people's homes. During a ten year period of separation from her husband, who was "so bitter and cranky that he'd move heaven and earth to prevent her getting anything", a "female member" of the Reverend George Hipkin's congregation in Bashaw found that she was barely able to support herself on the thirty-five or forty dollars a month she earned "doing scrubbing and washing for a living".[26] Other women were even less fortunate. When Mrs. Tetreault's husband left her in the spring of 1918, after "renting all of the cultivating land to his neighbour", she had "no way of making a support [as] she [was] old."[27] Unable to find work outside her home, a woman from Hays reported that she was compelled to return to her husband who "licked her with a club".[28]

Accounts of physical abuse are a common feature of the many appeals for help from deserted wives that survive in municipal and provincial records from these early years. Among them a letter from Mrs. McAlpine of Walsh is typical. In 1916 Walsh wrote to the Attorney General stating that she had suffered from her husband's "beatings" for sixteen years.[29] Recently, he had "threatened to stick [her] with a butcher knife" before "getting rid of everything", including several cows and sheep belonging to his wife, and leaving "for four months".[30]

Jessie O. Scott of Spokane, Washington, wrote on behalf of her sister, Mrs. John M. Spurling of Elnora who was "hovering between life and death [as a] consequence of inhuman treatment, cruelty and abuse at the hands of her husband".[31] Spurling had apparently forced his wife "to do a man's work in the fields, driven her about with a horsewhip, drawn a gun on her and threatened to kill her if she tried to leave him".[32] After working with her husband for fourteen years "on a homestead and later on a place of 320 acres", he was planning to "sell out" and return to England leaving his wife with nothing.[33]

For other women home protection was a much simpler matter. Mrs. Bery Murray of Murrayville Farm preferred to remain in her current home while her husband sought new opportunity elsewhere. "He is not a bad Husband", she wrote, just "unsettled and likes to move around" but she was "getting old and [did] not care to move any more".[34]

Government officials, while often sympathetic, could only advise married women that the law offered them no real protection; "in Alberta the husband [had] a perfect right to do with his property as he please[d]".[35] Their expressions of concern, though well-meaning, must have provided little comfort to women who faced the loss of their home and economic hardship as a result of temporary or permanent marriage breakdown.

This injustice was particulary offensive when it involved a homesteader's wife who, like Jessie Swan of Chauvin, "had worked hard . . . . for twenty years denying herself all the pleasures that others enjoyed to help her husband get along and made herself old before her time" only to find that he could "sell out", leaving her "in the lurch".[36]

Threatened with disinheritance, "A Western Canadian Wife" with seven children confided the bitter details of her homesteading experience in an undated letter to Emily Murphy.[37]

> I left all my friends and comforts and society [she wrote] and came to this new country and had many lonely trying times, endured many hardships including hunger and cold . . . . I had to do all kinds of work out doors in all kinds of weather, chop wood, carry water, milk cows, feed horses, cattle [and] pigs . . . . I help in the haying and harvest . . . besides all the baking, cooking, washing [and] make . . . my children's clothes . . . besides most of my own and my husband's . . . . I am seldom from home, never get to church or part[ies] . . . . I raise lots of chickens, ducks and turkeys . . . the profits of which I never get.

In addition to their labour, farm women frequently contributed to the purchase price of land, equipment and livestock. However, as in the case of Mrs. Fred C. Clark who "loaned [her husband] $1,000.00 before marriage to buy land but [had] neither note nor security", where no proof of such a contribution could be produced this too was threatened in the event of sale or disposition by will.[38]

Local newspapers generally gave little attention to the plight of farm women, however, during the autumn of 1914 the consequences of sexually discriminating rules of law were dramatically presented in the pages of the popular farm journal, the Grain Growers Guide. Published in the midst of the controversy over married women's property rights, "The Story of Jennie and John Tightwad" was clearly intended for its political effect.[39] At the same time, the author managed to present an accurate, if somewhat exaggerated, view of real life stories as they were being played out across the province.

Having consented to marry John Tightwad, Jennie Armstrong set out from Eastern Canada for her new home in the Canadian West "with a heart beating high with hope".[40] Although Jennie found that she had to work hard, helping with the harvest when her housework was done, the early years of her married life passed happily. In time she presented her husband with a healthy baby boy but continued to contribute to the running of the family farm; "milking a cow . . . keeping hens" and selling her vegetables and butter to augment her family's income.[41] At the end of fifteen years John Tightwad:[42]

> owned two sections of land, clear, many head of stock, a splendid barn, a fair sized house and six children. All that Jennie owned of this was her rather dowdy wardrobe. She hadn't even a legal share in the children . . . . [John] made it very clear to her that the money, and the house and the family were all his, though she had grown horny-handed in working for them . . . her husband was quite within the law. [Jennie] had no legal claim on anything. She discovered, to her chagrin, that her position in the home of her husband all these years had been that of an unpaid domestic.

Existing laws granting the married woman control and management of her separate property offered little protection to non-wage earning women or farm wives whose labour was deemed to be a wifely duty for which they were not entitled to compensation. A married couple could hold land jointly but few did. Title was usually registered in the name of the husband who was then free to use or dispose of it as he wished. In addition, the abolition of dower in 1886 had deprived women of any claim to an interest in their husband's property following his death.[43]

In response to the condition of married women, symbolized by Jennie Armstrong, women across the West began to call for laws that would protect the family home and thereby, guarantee a married woman greater control over her future. The campaign in Alberta was launched in 1909, with a petition calling for legislation restricting the right of married persons to alienate their property by will.[44] Among those who helped formulate and distribute the first petition was Henrietta Muir Edwards whose handbook on the Legal Status of Women of Canada, published under the auspices of the National Council of Women of Canada (N.C.W.C.), had appeared the previous year.[45]

A native of Montreal, Edwards had spent much of her adult life working to improve the position of women. As a young woman she had helped to found and establish the "Working Girls Association", a forerunner to the Bleury Street Young Women's Christian Association and was editor of a journal for working women titled Women's Work In Canada. In 1900 she contributed an essay on "The Political Position of Canadian Women" to the report on Women In Canada published by the National Council of Women of Canada (N.C.W.C.) for distribution at the International Exposition in Paris. Later, her work with female prisoners led Edwards to a life-long interest in the law as it concerned women.

Edwards moved to Southern Alberta in 1903. At the age of fifty-four she brought a long and valuable experience organizing on behalf of women. Most recently, as an active member of the N.C.W.C. in Ottawa she had served as convenor of the Council's Committee on Laws; a position she was to occupy until her death in 1931.

Upon settling in MacLeod, Edwards was elected President of the Alberta Council of Women and along with a hectic schedule organizing local councils across the province she undertook research into provincial laws concerning women. This work was interrupted by personal tragedy in 1911 when her husband, Dr. O.C. Edwards, died and again in 1914 when she took over the care of her grandchild following the death of her daughter.

Edwards' handbook on the Legal Status Of Women In Alberta was finally published in 1917.[46] It was made available through the University of Alberta's newly created Department of Extension at twenty cents a copy and received wide distribution throughout the province.

Edwards was never a severe critic of the law. Her intention in writing a legal handbook for women was simply "to supply, in concise form, information to those women in the Province who [were] seeking knowledge of the laws that particularly concerned them".[47] Nevertheless, her pioneering work helped to draw attention to legal discrimination against women and the urgent need for legislative reforms.

As a result of the suffrage campaign, women in Alberta were developing a keen interest in the law, particularly as it concerned women and children. In order to facilitate their enquiries a provincial Laws Committee was formed in 1916 under the auspices of the Alberta Council of Women. To assist with the committee Edwards called on another prominent reformer and suffragist, Emily Murphy, who had recently been appointed Police Magistrate for the city of Edmonton and judge of the juvenile court.[48]

Murphy has been credited with almost single-handedly drafting the first dower legislation passed in Alberta; however, this was not the case.[49] She had arrived in Edmonton in 1908, just as the campaign for married women's property rights was getting under way, and was probably familiar with the issues under discussion as a result of her recent association with the Winnipeg Tribune. At that time the provincial government had proposed legislation intended to extend the married woman's claim to her husband's estate following his death. Murphy objected to the legislation on the grounds that it did no go far enough to adequately protect the interests of women and children and she immediately became embroiled in the debate. By 1910 she had enlisted the support of a young MLA and member of the opposition from Calgary, R.B. Bennett. On December 6 the results of their collaboration was introduced to the Legislature as bill number seventy-four, "An Act Respecting the Married Woman's Property Act".[50] Bennett's bill received second reading on December 13 only to die in committee.[51] Several days later Rutherford's Liberal government passed its own act known as the Married Woman's Relief Act which granted a widow the right to apply to the courts for relief where by the the terms of her husband's will she received less of his estate than she would have if he had died without a will.[52]

Murphy must have been severely disappointed. Her bill had been defeated and her closest ally, Bennett, dismissed as "a susceptible young man affected by the pleadings of the ladies".[53] At least one local reporter had taken her seriously, however, and warned of her return:[54]

> It may not be this year, nor the next [he wrote], but this leader of women will keep hammering away until even the most obstinate man will be convinced that it is best to withdraw quietly and without further ado, and let down the bars.

These words would prove to be prophetic. Murphy was about to emerge as a leader of the women's rights movement in Alberta. She remained dedicated to the improvement of women's legal status all of her life and is most well known for her role in the "Persons Case" which marked the entry of women into Canadian constitutional life.[55]

Following her initial defeat Murphy carried the campaign for dower rights into the meeting halls and homes of the capital city's club women. Wherever there was an audience she appeared to speak of the urgent need for laws to protect women and children. In October, 1911 she addressed a meeting of the N.C.W.C. in Edmonton introducing a motion which called for the recognition of a wife's interest in her husband's property.[56] The following year she became convenor of the Edmonton Local Council's newly formed Committee on Laws. Murphy took advantage of the occasion to recall her bitter experience of 1910 concluding that "because women had no votes their going to the Legislature was not taken seriously . . . all that was considered necessary [by provincial legislators] was respectful treatment".[57]

Government resistance was not always particularly polite however. The provincial Attorney General, Charles W. Cross, was clearly antagonistic to the notion of a law granting a married woman the power to interfere with her husband's property rights. Speaking to yet another delegation of women, Cross, asked "why women should worry about possessing some of their husband's property during his lifetime? Time enough after he's dead".[58]

There is no evidence of organized opposition to dower in Alberta such as the Farmers Anti-Dower Law Association active in Saskatchewan, although there were those who objected to "the dower remedy [as] worse than the ill it [was] intended to cure, [creating] other injustices, tyranny and home dissensions".[59] Rather, according to one account, "the big obstacle to a dower law . . . [was] the Torrens title . . . . [T]he average legislator thinks he has offered the final word on the subject, when he has uttered that one word".[60] Opponents of a dower law argued that "in a country where land [was] transferred as frequently as it [was in Alberta], it would hamper proceedings terribly if a man were compelled to always get his wife's signature when selling a piece of property".[61]

The land boom that accompanied the province's rapid population growth during the pre-war period must have contributed to the sense of urgency expressed by those concerned with the security of the home. As headlines told of "Women And Children Left Homeless On The Prairies" while homesteaders sold out to the highest bidder, destitute families were forced to turn to the community for support.[62] Fledgling frontier towns were ill-equipped to respond to such emergencies and looked to the provincial government for assistance. When the town council of Hays was faced with the problem of having to assist "the wife of one of [their] ratepayers" the Secretary-Treasurer candidly admitted to the Attorney-General that they "[did] not wish to have her on [their] hands".[63]

Under increased pressure to provide some guarantee of protection to the family home, Arthur Sifton's Liberal government passed The Married Woman's Home Protection Act in the spring of 1915.[64] The Act provided that a married woman could file a caveat against the homestead which was defined as the house and buildings occupied by the wife as her home. As long as the caveat remained in place the homestead could not be transferred, mortgaged, leased or in any way encumbered. Even supporters of the Act admitted that it was a compromise but they believed that it granted the wife "all the protection of a dower law with the objectionable feature of interference with the title eliminated".[65]

Women's organizations were quick to dismiss the legislation as a "delusion and a hoax".[66] They criticized the government for not going far enough in protecting the home against foreclosure or "where the family might own from one house upwards but [lived] in rented property".[67] The Calgary Council of Women immediately called for an amendment to the Act which would prevent a married man from encumbering or disposing of any of his property without his wife's consent.[68] The Calgary women also felt that the provision that required a married woman to file a caveat in order to ensure that her home was protected under the legislation discriminated against "the majority of those living in country districts" who were "unfamiliar with the necessary legal process".[69]

More to the point, as the provincial Registrar was to acknowledge later, filing a caveat could be interpreted by the husband as a hostile or disloyal act. After receiving a number of letters from women who feared that their husbands were preparing to dispose of their homesteads, the Registrar wrote in a memo to the new Attorney General, J. R. Boyle, "we can only imagine that when a farmer's wife puts on her bonnet and spends a day in town at some law office on a mysterious mission, there is liable to be trouble at home".[70] Farmer's wives did indeed put on their bonnets but when they went to town it was to organize on their own behalf.

As mentioned above, the initial campaign for dower was led by a coalition of women's groups as diverse as the Women's Christian Temperance Union, the Canadian Women's Press Club and the Women's Canadian Club, spearheaded by the Alberta Council of Women under the capable leadership of women like Henrietta Muir Edwards and Emily Murphy. In 1916 they were joined by the United Farm Women of Alberta (U.F.W.A.) who would shortly establish themselves as a powerful voice for the rights of rural women.

Since its creation in 1909, The United Farmers of Alberta (U.F.A.) had actively sought the support of farm women.[71] Membership in the association was open to farmers' wives and daughters although they had primarily served as social convenors: raising funds, organizing U.F.A. picnics, community dinners and the like. A separate women's auxiliary was formed in 1915 but the following year the women fought for and won autonomy from the U.F.A. According to Irene Parlby, founding member and U.F.W.A. President from 1916 to 1920, the creation of a separate, autonomous women's group reflected a strong desire among rural women for full status as an integral part of the farm movement, rather than an adjunct to it, which the terms "auxiliary" and "section" implied.[72]

Although the U.F.A. supported the campaign for woman suffrage, being among the first in Alberta to endorse votes for women, independence meant that the U.F.W.A. was able to set its own agenda apart from the men.[73] Meeting in separate conventions, the membership could hold free and open discussions on a full range of issues that were of particular concern to women and which might otherwise have been directly or indirectly suppressed by the men. Indeed, the practice of referring U.F.W.A. resolutions to the U.F.A. executive for approval probably led to a tempering of the women's demands. In 1917, for instance, a U.F.W.A. resolution calling for a "dower law" guaranteeing the "wife's interest in all of her husband's property" was amended by the executive to read "one-third".[74] More telling perhaps is the fact that the U.F.A. had not addressed the question of married women's property rights until 1916 when the women passed resolutions calling for both a "dower law" and legislation preventing the husband from disposing of his property without his wife's consent.[75] Unlike the issue of female suffrage, the U.F.A.

never embraced the question of women's property rights, treating it largely as a women's issue, and therefore, limited to proceedings conducted within the U.F.W.A.

As a strong, organized voice for women, backed by the farm movement, the U.F.W.A. proved to be a political force which could not easily be ignored and their appearance in 1916 certainly strengthened the provincial women's rights movement. Nowhere did farm women make a more significant contribution to the advancement of the legal status of women than in the area of married women's property rights.

The right of the wife to an interest in family property was of particular concern to farm women. As maternal feminists who saw themselves as guardians of the family, rural women shared their urban sisters' commitment to the improvement of the position of women in the home. Unlike their middle-class counterparts, however, the farm women's struggle went beyond a concern for the condition of the less fortunate classes. They were fighting to improve the position of members of their immediate community. In addition, the wife's interest in the homestead she had helped to develop was more clearly defined for rural women although they often had difficulty specifying what that interest was.

All of these sentiments were embodied in a resolution arising out of the U.F.W.A. convention in January, 1917 which called for a "Dower Law" protecting women who:[76]

> are often deprived of the proceeds of property for which they have toiled mightily, merely from the caprice of their husbands and . . . [because] this deprivation is often disastrous to the family.

The resolution labeled existing legislation a "great injustice" to the wife who could still be "deprived of all share of the property except the homestead through her husband's will".[77]

In response to the objections raised by women's organizations the government decided to overlook conflicts with the Torren's system of land registration and replaced the Married Women's Home Protection Act with a Dower Act.[78] The new legislation which came into effect May 1, 1917, borrowed from American "homestead" laws which granted the spouse unprecedented rights in family property. First introduced by the Republic of Texas in 1839, these statutes were intended to protect the family home against financial misfortune.[79]

American homestead legislation differed substantially from common law dower since it stemmed from a much broader public policy which sought to promote the stability of the community. While common law dower was simply concerned with providing a form of maintenance to the widow, homestead laws were intended:[80]

> to secure to the owner a home for himself and his family, regardless of his financial condition - whether solvent or insolvent, and without reference to the number of his creditors, and without regard to the extent of the estate or title by which the homestead property may be owned. The laws were not based on the principles of equity, nor did they in any way yield thereto; their purpose was to secure the home to the family even at the sacrifice of just demands, the preservation of the home being deemed of paramount importance.

By protecting the family home the legislation sought to encourage home ownership and help to attract settlers to the American frontier. From a wider perspective homestead legislation benefited the community as a whole by promoting the stability and welfare of the home. Hence, in the American West the rights granted to the spouse of a homestead owner were part of a much broader policy to secure the state and encourage settlement on the frontier.

Following from this concern with the stability of the community, American homestead laws granted the wife protections over and above those traditionally associated with dower. As with common law dower, homestead legislation guaranteed the surviving spouse the use of the property, after the owner's death. In addition, it protected family property from certain kinds of creditors and limited the owner's freedom of disposition since the consent of the non-owning spouse, usually the wife, was required for a conveyance or encumbrance of the property.

The Dower Act introduced into Alberta was really a homestead act although protection against general creditors was not included in it. These provisions were already available under separate legislation.[81] The Act granted a married woman a life estate in the homestead arising on the death of her husband and provided that any dispositon of the homestead made by a married man without his wife's written consent would be "null and void".[82] The Act further stated that:[83]

> The domicile of a married man shall not be deemed, for the purpose of this Act, to have changed unless such change of domicile is consented to in writing by the wife of such married man.

Under the Act consent was required in the form of a certificate of acknowledgement signed by the wife "apart from her husband".[84] A homestead was defined in the Act as "the dwelling house and the land on which it was situated", that is, "not more than four [city] lots" or one quarter section".[85]

Homestead dower was heralded by the local press as marking the completion of the emancipation of women in Alberta. The pro-government Edmonton Bulletin, provided a complete review of legislative reforms concerning women and concluded that:[86]

> [t]his act, coupled with all the beneficent legislation that the Sifton government [had] already passed in the interests of women, place[d] the fair sex of Alberta on a very high plane indeed . . . making legislation for women one of the outstanding features of the Sifton regime.

Quoting almost verbatim from the government's own press release, the paper echoed the general opinion that, together with the recently enacted equal suffrage bill, the new Dower Act placed women in the province in a more favoured legal position than women in most countries around the world.[87]

Reaction from women, while generally positive, was more mixed. Although the narrow interpretation placed on dower legislation by the Alberta courts would cause her to reassess the practical value of the Act, in 1917 Henrietta Muir Edwards believed that The Dower Act had removed one of the last remaining impediments to legal equality of the sexes.[88] Indeed, she complimented the "Premier and members of his cabinet" for "the courteous and sympathetic understanding" with which they had addressed women's concerns and declared that, with the single exception of parental rights, the remaining "laws that disqualified women because of sex [were] Dominion and not Provincial".[89]

The Alberta Council of Women, the organization Edwards headed, was much less enthusiastic. They felt the Act failed to protect what was often the wife's only means to a livelihood, criticizing legislators for giving "the widow a home, but only the use for life of an empty house and accompanying land without any provision for furniture in the house or means of working the land".[90]

Rural women were even more critical of the legislation which they felt only went part way in recognizing the wife's interest in land she had helped to develop. However, when they raised the question of equal property rights with the government "the Premier took the position that the existing legislation . . . was in advance of that of any of the Western Provinces" and he, therefore, contemplated "no change in the existing laws".[91]

Sifton may well have wondered at these new demands. His government's dower legislation would appear to have more than adequately addressed women's concerns. However, while the government deliberated over its response to women's demands, rural women had already moved away from the modest request to limit the husband's right to alienate his property that marked the beginning of the dower campaign. A practical concern with providing protection for the family home was beginning to give way to the wife's claim to full and equal property rights in the homestead she had helped to build along side her husband. While some women continued to press for better protections for women through amendments to the Dower Act, as the debate over married women's property rights continued into the 1920s, rural women in particular began to demand legislation guaranteeing a more equitable sharing of family property. In the process they ran headlong into the problem of traditional sex/gender roles.

> According to some authorities the status of the married woman is supposed to be settled by the franchise, but in our present plan of life it might be questioned whether a truer test is not the standing of the married woman regarding property rights.
>
> Lillie Young McKinney, "Property Rights of the Married Woman"(1)

Chapter 3

"Homestead Dower": From Home Protection To Sharing The Family Farm. 1917 - 1925

Some historians have argued that the women's rights movement in Canada suffered a serious set-back as a result of a general retreat from social activism during the 1920s.[2] According to Veronica Strong-Boag the movement in Western Canada was seriously weakened by the crisis in the progressive movement which had provided much of the incentive for social change during the pre-war period.[3] Strong-Boag and others have also suggested that the suffrage victory itself deprived maternal feminism of much of its moral force as women voters came to see themselves more like men than unlike them.[4]

Certainly, the 1920s brought changes in attitudes which were less favourable to reforms for women. The conservative climate of the interwar years gave rise to old prejudices against women in education and employment.[5] As the Western world emerged from the chaos of military conflict women and men sought reassurance in familiar institutions. The predictability and security these institutions represented was prized all the more in the rapidly changing world of the "roaring twenties". Wide-spread labour unrest, the threat of Bolshevism, the undisciplined pursuits of the "flapper generation" were seen by many as signs of moral decline. The solution to social and economic ills seemed to lie in a return to the old values of home and family. Women who had so recently taken the public place of men absent at the front were called home to the responsibilities of motherhood and the work of restoring domestic life.

Notwithstanding these considerable obstacles, women in Alberta entered their second decade of reform activities with a renewed confidence and sense of purpose. Far from marking a retreat from reform activities, the 1920s saw the achievement of new feminist successes in Alberta. Buoyed by past political victories and armed with the vote, feminists felt that their "whole position [had] been altered".[6] Addressing the twenty-fourth annual meeting of the National Council of Women of Canada in 1917, Mrs. F.F. McWilliams, President of the Winnipeg Council, told delegates that as a result of voting equality women in Western Canada:[7]

> seemed to stand more squarely on [their] feet . . . than in their pedestal days. . . . We seem [she said] to have a new sense of responsibiliy of opportunities."

Feminists also took encouragement from the growing ranks

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of women expressing support for their fight for a "fair deal". Past experience had taught women the value of organizing and their ranks had been considerably expanded by an acceleration of the women's club movement in the 1910s and 20s.[8] Although not all club women were feminists, their association helped to develop a pride of gender and greater awareness of the disabilities imposed on their sisters.[9] Indeed, by the middle of the decade the strength of women's collectivities in the province had become legendary. In his history of Alberta published in 1924, John Blue, provincial librarian, paid special tribute to the many "flourishing and aggressive" women's clubs and associations in the province.[10] "Like all Canadian women", Blue boasted, the women of Alberta "have a genius for organizing".[11] Nor had their political skills gone unnoticed by Mrs. McCorquodale, editor of the High River *Times*, who is reported to have said that:[12]

> [she] would have no difficulty recognizing the Alberta women in Heaven. . . . with pencils and notebooks, they would be in little groups beside the river of life putting the finishing touches to resolution B72894.

The women's rights movement in Alberta had also benefited from women's wartime experience. Personal sacrifice and patriotic war work had given women a new image of themselves and new ideas about their role in society. As Nellie McClung so colourfully described it:[13]

> while the nimble fingers of the knitting women are transforming balls of wool into socks and comforters, even a greater change is being wrought in their own hearts. Into their gentle souls have come bitter thoughts of rebellion . . . . They realize now something of what is back of all the opposition to the woman's advancement into all lines of activity and a share in government.

Not all women had been converted into revolutionaries, but between 1914 and 1918 growing numbers of them joined in the fight to improve the condition of their sex. Their enthusiasm and commitment to change carried the women's movement to new successes during the 1920s, particularly in the area of legal reforms.[14] Among the priorities set by female reformers during this period was a more equitable sharing of family property. Initially women hoped to achieve the necessary changes through amendments to The Dower Act. By the middle of the decade they had come to realize that more radical reforms were required if the interests of the married woman were to be fully protected in law.

Although homestead dower had gone further than any previous legislation in guaranteeing the married woman's interests in the family home, it did have serious shortcomings. The Act had not created a property right in the wife that she could deal with in her own name. It merely provided a life interest to the widow in her husband's homestead. That is, upon the death of her husband, a married woman was assured the use of the family home and the land upon which it was situated, up to and including a quarter section or four city lots, for her lifetime. She could not sell or dispose of the homestead by will nor could she mortgage it or in any way encumber it. Furthermore, homestead dower did not include chattels or moveables. In other words, the Act did not provide the wife with the use of home furnishings, farm equipment, livestock, seed or the like. Nor could she, if she wished to convert her home into a boarding house or continue to operate the farm, use the homestead as collateral to raise money for business or any other purpose. As Henrietta Muir Edwards pointed out, homestead dower provided that the wife "may be left the bare home or homestead, but without the wherewithal of making a living".[15]

The more significant provision provided by the new legislation was the prohibition against disposition of the homestead without the wife's written consent. Unlike the wife's right to a life interest in her husband's estate, section 3 did not depend upon the wife surviving her husband but, as described by Mr. Justice Ives, "secured the home to the wife during her husband's life".[16] However, serious doubt was cast over this very right within a year of the Act's being passed.

In May of 1918 Kasko Choma and her husband, Petro, brought an action under the new Dower Act contesting the sale of land, including their homestead, to the defendant, Mr. Chmelyk.[17] Initally, all appears to have gone well following the agreement for sale which the parties had entered into the previous year. Chmelyk had made a $1,000.00 downpayment and agreed to pay the remaining $2,650.00 in annual instalments over a seven year period. He proceeded to farm the land and the Chomas remained in the "dwelling house" as agreed. However, sometime during 1917 the Chomas must have had second thoughts about the agreement they had made with Chmelyk. During the trial they claimed that "the purchase price was grossly inadequate" and that Chmelyk had forced Petro Choma to agree to it against his will. They further charged that "the agreement for sale was entered into without the consent in writing" of Kasko Choma and that it was therefore "null and void" under the provisions of section 3 of The Dower Act.

In his judgement Mr. Justice Scott referred to "Webster's Dictionary" and William Blackstone's Commentaries on the Law of England for a definition of dower. Not surprisingly he found that:[18]

> [t]he right to dower is merely an inchoate right dependent upon the wife surviving her husband. Neither at common law nor under any English statute did it give her any rights to any interest in his lands during his lifetime.

Once Scott had defined homestead dower as common law dower he was led to the conclusion that:[19]

> the sole intention of the Legislation [The Dower Act] was to restore the wife's right to dower [which had been abolished by the Territories Real Property Act in 1886] in respect to her husband's homestead . . . [and] it was not the intention [of the Legislature] to extend the wife's interest in the homestead beyond that which she would have possessed had the common-law right to dower existed.

Scott went on to state that:[20]

> [any disposition] of his homestead by a married man without his wife's consent in writing shall be null and void only in so far as they may prejudice or affect her estate in dower therein.

The action was dismissed with costs.

Clearly, Mr Justice Scott believed that the Chomas were attempting to use the new Act in order to withdraw from the original agreement for sale believing that they could obtain a higher price for their land. If, for this reason, Scott wanted to find in Chmelyk's favour, he might have done so in a number of ways without redefining the Act so that the wife's interest during her husband's life was all but eliminated on the erroneous grounds that it was "contingent".[21]

Scott's view became law in 1919 when The Dower Act was amended to say that disposition without consent was "null and void only insofar as it may affect the interest of the said wife".[22] As to the precise nature of the wife's interest, the court was divided. One year later, in Overland v. Himelford, a husband and wife sought to avoid the lease of their home charging that although the wife had signed it as though she were lessor, she had not acknowledged her consent in writing as - by the Act.[22] In their judgements justices Beck and Harvey held that the lease was valid, agreeing with Scott in Choma v. Chmelyk that the wife's only interest in the homestead was a life estate "which she has contingent on her surviving her husband".[24] Ironically, Beck added that the wife had a right to dispose of her dower interest since "[t]o hold otherwise would be to put a check upon the whole present day current of legislation in favour of the equality of the sexes in regard to property and civil rights".[25] Justices Stuart and Ives were of the contrary opinion that the lease was invalid as it interfered with the clear intention of the Act "as it stood in 1918" which was:[26]

> to create a right in the wife to occupy and reside in the homestead even while the husband lived and in addition to that to give her a life estate after his death.

Critical of Scott's decision in Choma v. Chmelyk, Stuart held that:[27]

> [the] meaning of this new legislation . . . whether we agree with its policy or not . . . [was] to remove what was doubtless considered by the Legislature some injustice in the position of married women with respect to their homes and to give them the power to restrain the husband from alienating them.

"I think", he said, "the amendment of 1919 did not declare the law but altered it to the detriment of the wife".[28] However, in 1922, in Johnsen v. Johnsen, Stuart changed his mind. In that case the wife challenged the forced sale of the homestead to satisfy her husband's judgement debt, claiming that she had a dower interest in the land and that it could not be sold without her consent.[29] Stuart upheld the sale stating that:[30]

> whatever I may have said in Overland v Himmelford . . . [my] present opinion [is] that The Dower Act gives the wife an interest in the homestead in the nature of a life estate which vests upon the husband's death.

In the meantime, in Rigby v. Rigby, the court had been asked to further define the wife's dower right.[31] In that case the wife, living in California at the time, had placed a caveat on the homestead lands to prevent their disposition without her consent. The husband having made a will leaving the land to his brother and sister applied for an order dispensing with the wife's consent to the intended testamentary disposition. The court refused to grant the order, finding that the wife had "such an interest in the homestead (the home) of her husband as to entitle her to file a caveat . . . to protect her interest" and that this was a vested interest there being no express provision in the act to permit a court to dispense with the wife's interest in these circumstances, as there was in the case of an intestacy.[32] This decision would appear to have given the wife a present vested interest in her husband's homestead during his lifetime but the court of appeal refused to define the wife's interest beyond the right to file a caveat since it was "not asked to do so", thus, leaving the question open to interpretation.[33]

With these conflicting opinions before him, Mr. Lorne N. Laidlaw, solicitor for Lucina F. Nicholson of Bowmanton, wrote the Deputy Attorney General requesting a clarification of the government's intentions concerning the Dower Act.[34] Nicholson had applied to the court to have her husband's lease to James Collipriest set aside on the grounds that the lands being leased included her homestead and she had not given her consent. In her affidavit Nicholson stated that she had not agreed to the lease because:[35]

> [she was] now advanced in years being 64 years of age . . . [and having] spent several years of hard work and privation of comforts in helping to build up what is now a comfortable home . . . [she did] not desire to leave [it] to assist in building another home elsewhere, particularly on account of [her] age, . . . [she had] developed an affection for [her] present residence and desir[ed] to spend the remainder of [her] life [there].

In his decision against Nicholson Mr. Justice Ives said that he:[36]

> would have been prepared to hold [her husband's lease] a nullity before the recent judgement of the Appellate Division in the case of Johnsen v. Johnsen . . . but that decision clearly applies here and the wife's application must be refused.

In his letter dated October 21, 1922 Laidlaw explained that his client did not have "the means" to pursue the matter any further, but felt that Ives decision was "entirely unsatisfactory" since it "appeared to violate the clear intention of the Dower Act".[37] Government lawyers were, however, less certain and "wondered how the Courts could ever uphold anything in contradiction of their present attitude in Johnsen v. Johnsen".[38] There is no record of Lucinda Nicholson having appealed her case. Presumably she remained in "the dwelling house and garden patch" her husband had provided for her.[39]

Women who had fought for nearly two decades to secure the family home to the wife viewed the court's narrow interpretation of homestead dower with growing concern. Repeated calls for amendments to The Dower Act had been met with polite refusals. In 1926 Henrietta Muir Edwards condemned the court's ruling in Johnsen v. Johnsen "that a woman has no right in her home until after the husband's death", arguing that such a view was "not in accord with the intention of the Act".[40] Critical of the government's failure to "take action" to rectify the situation, Edwards told George Hoadley, Minister of Agriculture, that:[41]

> 99 out of 100 women have thought that the use of her home was protected during her lifetime . . . . We had no idea [they] could be turned out. Every year we have been coming up asking for amendments to the Act. . . . [but] we have not got what we thought we had . . . we know now we are not protected.

As early as 1919 The United Farm Women of Alberta had called for the restoration of section 3 of The Dower Act to provide that any disposition of property by a married man "shall be null and void unless made with the consent of the wife" and demanded an amendment guaranteeing the "furnishings of the home . . . to the widow".[42] The following year a delegation of provincial women representing the Local Council of Women, the Women's Christian Temperance Union and the Alberta Women's Institutes met with members of the Liberal government to request that the wife's dower right be extended to include "furniture, and in the case of farm women . . . the necessary supplies for the carrying on of making a living from the farm".[43] Although some members of the legislature were sympathetic to women's claims, Premier Stewart "expressed himself as strongly opposed to anything in the way of exemptions" as, in his opinion, they tended "to work great hardship" to the creditor.[44] Nevertheless, he promised the delegates that he would find "some way out of the difficulty so that justice would be done the widow".[45]

In the course of events, it fell to the United Farmers' Government to provide that justice. Many women, particularly those in rural areas, were encouraged by the overwhelming victory that swept the United Farmers of Alberta into office in 1921. With two leading feminists, Nellie McClung and Irene Parlby elected to the legislature and Parlby's appointment as Minister without Portfolio in the new government, they anticipated greater co-operation in achieving their programme of legislative reforms.[46] In 1923, Marion L. Sears, Parlby's successor as President of the U.F.W.A., expressed confidence that the "long and bitter" struggle for "just laws" waged in "older more settled regions" of the country would not be necessary in Alberta.[47] "We do not look forward to a similar experience with Farmer governments", she said, since "[p]ioneering together on the prairie gives men and women a mutual regard for the rights and privileges of one another".[48]

Sear's optimism was rewarded, to some extent, in 1926 when the U.F.A. government passed legislation aimed at eliminating some of the more objectionable defects in the existing Dower Act.[49] As it was possible to mortgage property without documentation and thereby circumvent the consent provision, the amending legislation specifically stated that the wife's written consent was required for "every mortgage by deposit of certificate of title or other mortgage not requiring the execution of any documents".[50] It also restored the Act to its original form by striking out the words added to section 3 in 1919 thus "preserving to the wife as far as possible the use of the homestead during the life of the husband".[51] In addition, it extended the wife's dower interest to include a life estate in "the personal property of the deceased husband"[52] and gave the court discretion to decide the extent of the personal property "[i]n the event of any dispute arising".[53]

While the government's action was applauded by some women as "a great boon to many a wife whether she lives in an urban or rural municipality", others had become disillusioned with homestead dower seeing it as far too limited in principle.[54] Although Emily Murphy had been a strong advocate of the Act passed in 1917, by 1926 she had arrived at the conclusion that dower was one of the many legal "stumbling blocks" to equality in marriage since it perpetuated the economic dependence of the wife".[55] Despite government intervention, Murphy wrote, the married woman still had "no pay, no property, no possession and is even dependent for her food and clothing".[56] Lillie Young McKinney, a Calgary based feminist and writer, declared that women had "passed the stage where they [were] asking for a 'life interest' in a little corner of the 'joint estate' they had helped to build.[57] She believed that "[l]ittle bits of favoritism in legislation" were insufficient if the "interests of the two home builders" were to be fully recognized in law.[58]

In part, dissatisfaction with homestead dower was due to the high expectations with which some women had greeted the legislation. Encouraged by the government and its supporters some women believed that the new Act promised to right all past injustices in domestic relations. When her husband died in 1917, Mrs. William Crispell of Dapp thought that the new provisions would "save [her] home" from her son-in-law who she said was "anxious for his wife's share [of her father's estate] to get money to go back to Michigan".[59] Mrs. B. Jordan wanted to know if there was anything in the Act "in defence of wives where the men are . . . selfish and tyrannical".[60] Mrs. L. Parsiele supported dower because she had a husband who was an "artful dodger, a hail fellow with the boys, with no concern about the coal bin nor the cupboard".[61] A woman from Calgary wrote to Emily Murphy encouraging her fight for a dower act since her husband was "very trying" and she felt nothing more than a slave".[62] Mrs. E.H. Robbins of Consort wanted to know if there was anything in the law that gave the woman "the same right to the farm as a man?"[63]

In part, women who had so vigorously campaigned for dower legislation had failed to define their objective or the basis of their claims clearly. Motivated by practical concerns rather than philosophy, most women never challenged the husband's ownership rights as title holder but felt that a "fair share" in the home ought to be provided to the wife. As Elizabeth Clark so candidly put it:[64]

> I wanted the law to grant [women] our share as well as the men. I felt humbled to take anything off my husband in a way although I knew it was rightly mine. . . . I always felt I wanted the law to make it straight for me.

The problem was further complicated by the fact that during the early stages of the debate the term "dower" had become synonymous with equality of matrimonial property rights. In the pages of the N.C.W.C.'s official journal, Women's Century, Lillie Young McKinney pointed to this confusion, stating that, she had "known [women's] organizations to pass resolutions asking that both husband and wife shall have full dower rights, each in the estate of the other, when [she] felt sure from the discussion that they did not at all mean 'the use of'".[65] She believed that the latter was "doubtless the interpretation which the Legislature gave to [women's demands] - if, indeed they considered [them] that far".[66]

In part, the limited provisions of the Act and the erosion of the wife's rights as a result of the conservative interpretation placed on them by the court was no longer seen as sufficient recognition of the contribution made by the wife "who rears a family; who contributes to the upbuilding of a home; who aids and comforts her husband".[67] "In Canada", Emily Murphy wrote:[68]

> while claiming social, economic and political equality with men, our women are fighting for dower rights, for allowances in alimony, and for damages in breach of promise, all of which . . . are an open acknowledgement of inequality. . . . [While] the thing sought is that the wife shall no longer be considered as a 'kept' or 'supported' woman. . . [but as a partner with] equality of interest and equality of responsibility.

In stating women's claim to equal property rights, Murphy was drawing upon six years of debate which had been conducted largely within the women's movement. While continuing to press for amending legislation, women had begun a vigorous campaign to secure to the wife a property right in her own name in the family farm. As mentioned above, the United Farm Women of Alberta were the first to call for a new matrimonial property regime in 1918; however, at the time the government had rejected the proposal as impractical. The following year married women's property rights dominated the farm women's week-end long convention. The debate focused on a comprehensive resolution presented by the Calgary U.F.W.A. Local, led by Lillie Young McKinney, calling for equal custody and property rights for women.[69]

In the event of marriage breakdown, the courts had traditionally refused to grant the wife custody of her children on the grounds that she had no means of supporting a family. Therefore, the Calgary women proposed that, where there were children, the court be granted the power to give the custody parent "such portion, more than one-half, of the property of both or either [husband and wife] as . . . shall seem just".[70] Where there were no children, they recommended that "in the case of legal separation . . . all property owned by either or both [spouses] . . . be divided equally between them".[71] In what they felt to be the "best interest of the home", the Calgary women recommended that "during their coverture" both husband and wife should be granted a dower interest in family property and that the wife should be guaranteed "half the joint earnings of herself and [her] husband".[72] At the end of a lengthy debate led by Henrietta Muir Edwards and J.E. Brownlee, then U.F.A. solicitor, the delegates failed to reach a consensus concerning the details of the resolution but did endorse the principle of "partnership in marriage", recommending that it be "worked out by [provincial] legislators and embodied in [Alberta] laws".[73]

During the following year no action was taken by the government and the matter was reopened in 1920 when the U.F.W.A. met in Calgary. In addition to the previous demands, the second "Equal Custody and Equal Property Rights" resolution, drafted by Lillie Young McKinney, recommended that desertion should automatically result in the forfeiture of all property.[74] After a heated debate the resolution was defeated once again despite general approval of "the justice" it proposed.75 According to one report the delegates considered the matter to be "too complicated" and "too important" to be properly addressed by the convention. It was therefore agreed to refer the entire question to the U.F.W.A. executive "who, with Mr. Brownlee, could deal with [it] more deliberately".[76]

The result of that deliberation appeared in 1922 when the U.F.W.A. called for the abolition of homestead dower and the statutory recognition of "the principle of community [of] interests of husband and wife with regard to property acquired as a result of their common labour and effort . . . [to apply] in coverture, in separation and at the death of either [spouse]".[77] Having defined community of property the resolution then went on to suggest that the husband should be recognized as head of the community. It stated that:[78]

> [the] husband shall have the management of the community property but shall be restricted as to selling or mortgaging real estate, or leasing it for more than one year, without the concurrence of his wife.

While farm women discussed a more equitable distribution of matrimonial property, the urgent necessity of legal reform was dramatically demonstrated by the case of Lela O'Leary then before the Calgary courts. O'Leary had recently left her husband, alleging "various acts of cruelty", but was denied alimony and custody of her four young children including an infant daughter of "three or four months", born after the couple had separated.[79] Her husband, Synott O'Leary, had been charged and found guilty of assaulting his wife while she was pregnant, but the trial judge, Mr. Justice Scott, held that "the evidence [was] not conclusive that the assault took place" and in the absence of proof of legal cruelty he "would not be justified in allowing . . . alimony" to the wife.[80] Scott went on to say that he was of the opinion that Lela O'Leary was complaining "a little too much . . . about her husband's behavior", that she "nagged him a little bit" and that in a quarrel she "did not lie down to him at all".[81] He then suggested that reconciliation might be facilitated if Synott agreed to provide Lela with "a little money to spend occasionally on little extravagances", noting that "[a] woman likes to have a certain amount of money to spend in her own way".[82]

Since Scott's decision the couple had been living apart; he with his children and a married sister on the family homestead at Cluny and she in various Calgary rooming houses while "support[ing] herself by dressmaking".[83] Synott repeatedly interfered with Lela's attempts to see the children but on the night of December 23, 1921 she stayed with them at the farm near Cluny while Synott was absent.[84] When he returned "in the early morning . . . [he] forcibly ejected her from the house while she was only partially dressed. The temperature was fifteen degrees below zero . . . [and she] did not again attempt to go to see the children".[85]

Four months later Lela returned to court seeking restitution of conjugal rights in an attempt to resume her action for custody and maintenance, but was denied.[86] An attempt to re-argue the case in Chambers in October, 1922 was also dismissed.[87] Finally, in January, 1923 Lela was granted an appeal of the previous decisions.[88] In their judgement in her favour justices Stuart and Beck, with justice Hyndman concurring, quoted extensively from English case law and Ecclesiastical legal principles finding that matrimonial law was not only "uncertain", and therefore costly, "even when the Highest English Judges have to decide it", it also discriminated on the basis of sex.[89] Stuart noted that "if the husband and not the wife should happen [to be the plaintiff] we should have to travel a different road altogether".[90] In reference to the case before him, he said:[91]

> [t]hese appeals bring out very clearly the extremely complicated and tangled condition in this province of the law, statutory as well as non-statutory, with respect to domestic relations.

Calling on Alberta legislators to clarify the situation, he asked if "anything [could] be more complicated or indeed in some respects absurd than [the present] legislation".[92]

Three years after Lela O'Leary first appealed to the court she was finally reunited with her children and given a promise of alimony and custody should her husband fail "to comply with the judgement".[93] In addition, the court went to some length to overrule an order of the court dispensing with her consent to disposition of her husband's homestead lands.[94]

Those concerned with married women's rights had followed the case with great interest. Despite the ultimate outcome in Lela's favour, her struggle was seen as a particularly compelling example of the legal disabilities imposed on women because of their sex and confirmed women's fight for necessary reforms. Indeed, Henry A. Chadwick, counsel for Synott O'Leary, wrote to J.E. Brownlee who had recently been appointed Attorney General for the province, alerting him to "rumors" that, as a result of O'Leary v. O'Leary, the women of Calgary were planning "to ask for legislation further determining the rights of women".[95] In his letter, dated October 10, 1922, Chadwick warned that these "totally unconsidered and impracticable suggestions" might cause the government "some annoyance and difficulty" since "some members of the legislature . . . [might] not appreciate the great dangers of such legislation".[96]

Chadwick was particularly alarmed by women's demands for an equal share in family property. An attempt had been made to raise the question of joint estate at the O'Leary trial and he considered it "impractical" for "at least a dozen reasons" not the least of which was the protection of the wife which, he believed, would be threatened by such reforms.[97] Certain of Brownlee's concurrence, he offered to give the Attorney General "any assistance [he could] at any time [should] any attempt be made [by women's organizations] to obtain legislation".[98]

Brownlee, of course, was quite familiar with the debate being conducted within the women's movement. He had not only been present when the question was raised by the U.F.W.A. but had advised the executive on the modified resolution passed earlier in the year. Although he felt that "public opinion . . . was not ready for [community of property legislation]", he ordered a full investigation into the matter.[99] In their final report, dated December 5, 1923, departmental lawyers concluded that in spite of existing "inequality" and "apparent injustice" in the present laws as they concerned the married woman, any solution would require "community practically on the basis of partnership".[100] In the opinion of the authors, such a remedy would do "more harm . . . than [was] realized" and, since "the position of wives" in Alberta was already "more favourable than in any other Province or in England", they recommended against any "reform in the laws to attain the result of general joint ownership" as too costly, too radical, inconvenient, unjustifiable, as well as, generally too disruptive to the economy and therefore bad for business.[101]

Among women's groups however, "community of interest", what is today known as matrimonial property legislation, was gaining widespread acceptance. Some women were even demanding full equality between husband and wife, rejecting the notion of the husband as head of the community as proposed by the U.F.W.A. According to Emily Murphy, much of the support for a new property regime in marriage came from "the many American-born" settlers in Alberta who had come from "the States of Washington, California, Idaho and Nevada . . . [and] were accustomed to systems of community of property . . . [which they] greatly preferred . . . to [the] Dower and Widow's Relief provisions" provided by Alberta legislation.[102] Influenced by their American sisters as well as those familiar with the "Quebec version of the Napoleonic Code", Murphy declared that, "Western women" sought nothing short of the "abolition of legal differences between married men and women" as the only law consistent with the modern idea of "partnership in marriage".[103] Women, she wrote, were "desirous of abolishing the whole system of coverture, and of conferring equal rights and responsibilites" on both spouses.[104] In an article that appeared in the Calgary Herald in 1922, Lillie Young McKinney put it more succinctly when she stated that the wife was no longer content to "eat bread because she is her husband's wife" but wished to "eat bread because she has earned it".[104]

Only under the community of interest "plan" McKinney argued, was the old "vasselship of the wife" abolished and her labour recognized in law.[106] The problem, as S.M. Gwendolyn Duff, an Edmonton lawyer, explained it to members of the Alberta Women's Institute, under the old rules of English common law:[106]

> [the wife's services] belong to her husband and [are] his property the same as those of his horse or other animals . . . [thus] the wife's work in the home [is] not recognized legally as having economic value. . . . Because the husband is the one usually whose labour brings in the money . . . [the wife] is made to feel that his work is of importance while hers is not, and that she and her children exist on his bounty. . . . Although by her self-sacrifice, a woman has been of equal help in accumulating the property during her marriage, she has no 'say' as to the disposition of it, either during her lifetime or after her death.

Although many women supported legal reforms for women because of the obvious injustice of existing rules of law, some viewed community of property with suspicion. As J.A. Boyle had predicted when he was Attorney General in 1919, some "English people" found it objectionable because of its association with French legal tradition.[108] Mrs. Jean Williamson of the Medicine Hat Women's Christian Temperance Union believed that "in the end . . . our own good old British Statutes, [would] satisfy the Canadian and British women"; certainly, she did not want to see "Quebec law . . . spread all over the country".[109] Other women never fully appreciated what was being proposed. Mrs. B.F. Kiser, Convenor of the High River U.F.W.A. Committee on Laws, admitted it was "almost like Greek" to her.[110] Mrs. J.J. Hewitt, of Medicine Hat felt that the homestead [was] usually held by the one best qualified to protect the home interest" and any change in the law would only create "disruption, strife and trouble in the home".[111] In some cases confusion and misunderstanding led to the fear that community of property would threaten the married woman's separate property: a privilege women had "fought for years" to obtain and now "some would have [them] throw . . . [it] lightly away".[112]

In response to such concerns Miss G. Playter, a lawyer with the Attorney General's department in Edmonton, properly questioned how "Community of Interest or the partnership idea" would be detrimental to married women who typically held little or no separate property, but advised that "no step [would] be taken by [the] Government . . . before a careful study of it was made".[113] However, in 1925, when the debate over married women's property rights culminated in a community of property bill introduced into the provincial legislature by Irene Parlby, the government was forced to take action.

Despite widespread sympathy for women's demands, Parlby's bill, "An Act Establishing Community of Property as Between Husband and Wife", was defeated following third reading in the house.[114] Nevertheless, the proposed legislation represented a considerable achievement for Alberta feminists. Notwithstanding an unfavourable climate of opinion, organized women had succeeded in raising public awareness of the disabilities imposed on the married woman. By their persistent attacks on oppressive sexually discriminating property laws they forced a public debate on the condition of women in marriage. Although opinion both inside and outside the provincial women's movement was divided on the question of what was to be done, once the matter was before the legislature it could no longer be easily dismissed as merely a woman's question.

> Upon marriage, women should become equal shareholders in the home . . . husband and wife should be of equal rank both in law and in fact and, therefore seized of a joint responsibility for the maintenance of home and children. How this responsibility can best be met is a matter for the partners to decide.
>
> Emily Murphy, "Parnership In Marriage" - Manuscript(1)

Chapter 4

"Community of Property": The Defeat of Matrimonial Property Legislation in Alberta 1925 - 1928.

In 1925 the Alberta campaign to secure a right in the family home to the married woman culminated in proposed legislation intended to establish an equal division of property acquired by husband and wife during marriage. What began in 1909 with modest demands for a guaranteed voice in the management of family property, ended with the wife's claim to half of the common wealth of the marriage. Drawing on their pioneering experience, women who worked side by side with men in building family assets sought the abolition of the old common law rules of coverture which perpetuated their economic dependence and the creation of a more equitable matrimonial property regime recognizing their contribution to the marriage partnership. At the request of provincial women's organizations, Irene Parlby, Minister without Portfolio in the

United Farmers government in Alberta, introduced a bill into the legislature which, if enacted, would have established community of property between husband and wife.

Modelled after similar community property laws in Europe and some American States, Parlby's bill proposed the creation of three separate estates during marriage: the common estate, the wife's estate, and the husband's estate.[2] It stated, in part, that:[3]

> All property of the husband (or wife) owned by him (or her) before marriage and that acquired afterward by gift . . . shall be his (or her) separate property . . .
>
> All other property acquired by either husband or wife, or both, during the marriage, including the rents and profits of the separate property of the husband and wife, shall be community property . . .

Under the terms of the proposed legislation the husband would serve as head of the community with the sole authority:[4]

> [to manage and control] the community property with the like absolute power of disposition, other than testamentary, over community personal property as he has of his separate estate; but he shall not sell, convey or encumber the community real estate unless the wife joins with him in executing the instrument of conveyance . . .

The partnership principle embodied in Parlby's bill was widely supported by women's organizations but opinion as to the specifics of the legislation was sharply divided. In particular, women objected to the powers reserved to the husband, including his right to alienate all community personal property without his wife's consent.[5] To those who successfully fought to have the husband's freedom to dispose of his personal property curtailed by the Dower Act this was seen as a regressive measure in terms of the married woman's interests.

Of equal concern to many women was the inclusion in the community of the wife's wages and profits from her separate estate.[6] However, since this rule would also apply to the husband's income during marriage it, in fact, could only benefit non-wage earning wives. Indeed, as Emily Murphy pointed out, "for the woman who [had] no private property, nor the likelihood of succeeding to any" the community provision was an "especial advantage".[7] Wealthy women, or men for that matter, could maintain control over their separate property by contracting out of the legislation. Nevertheless, in the face of these and other criticisms, Parlby's bill was defeated upon third reading. The question of community of property, however, did not end there. It was given over to an advisory committee for further consideration.

The committee, created by Order in Council, was headed by Irene Parlby.[8] At her request, Count De Roussy De Sales, S.M. Gwendolyn Duff, Henrietta Muir Edwards, Emily Murphy, George Ross, and Elizabeth Wyman were appointed to assist in the investigation.[9] Of the female members of the committee, Parlby, Edwards, and Murphy had all played leading roles in the long struggle in Alberta to improve the married woman's property rights. As a founding member and first President of the United Farm Women of Alberta, Parlby was closest to the rural fight to secure an interest to the wife in the family farm.

In many respects Parlby was an unlikely candidate for leadership in a Western Canadian rural women's association. Born in London, England in 1868 to Lieutenant-Colonel and Mrs. Ernest Lindsay Marryat, she had grown up among the privileged families of British officers in India.[10] Her formal education followed a pattern typical of young English women of her class and time, studying literature, elocution, music and art under the guidance of private tutors in England and finishing with the mandatory tour of continental Europe. Then, in 1896, at the age of twenty-eight, a spirit of adventure led her to accept an invitation to visit friends on their ranch in Southern Alberta. There she met and married Walter Parlby, a young Oxford graduate, who with his brother Edward was the first European to settle in the area east of Lacombe. Following the wedding, complete with cake sent from Fortnum and Mason's in London, the couple moved into "Dartmoor" ranch near Alix where they soon became leaders in the community. Walter served on the executive of the U.F.A. and Irene organized a literary club, the Alix Countrywomen's Club, shortly to become the first Alix local of the U.F.W.A.

Parlby's leadership in the U.F.W.A. led to a distinguished political career in the provincial government where she earned the distinction of becoming one of the first women to hold cabinet rank in the British Empire and, in 1930, on the international stage as Canada's representative to the League of Nations in Geneva. She was also a leading member of the suffrage movement in Alberta and a co-defendant in the famous Persons Case.

Although Parlby resigned as President of the U.F.W.A. in 1920, she remained an ardent advocate of justice for farm women. "Perhaps no group of women have suffered more", she wrote in 1925, as a result of the "humiliating condition" imposed on married women; "[c]ertainly no group of women [had] laboured so hard so ungrudgingly and so unselfishly" yet, under the existing rules of law "not even the produce that they raise[d] by their own labor, [could] be sold and claimed as their own".[11] Indeed, in introducing community property legislation Parlby was especially cognizant of the position of the farmer's wife whose work "in caring for her household, was supposed to be a labour of love, and of no economic value" under the present "humiliating" laws.[12]

As a result of their experience in the woman's movement Parlby and Murphy shared the conviction that existing laws offered "little or no protection to the married woman".[13] They believed that the only modern solution to sex inequality in marriage lay in recognizing the married woman's contribution to the home and family. "Today", Parlby wrote in defence of community of property:[14]

> women have proved themselves capable of entering many fields of labor, manual and intellectual, in which men work, and their demand for equal opportunity, and equal pay for equal work is being more and more recognized . . . . [These] [m]odern conditions must be faced, and the wife must not be placed in an inferior economic position to the umarried woman, because she gives herself to the valuable and important work of caring for home and family.

Murphy was equally wholehearted in her support of community of property legislation. In a series of articles written between 1925 and 1927, she endorsed Parlby's bill as the only "solution to domestic difficulties arising from the maladjustment of property rights in marriage" which would "make for the stability of the home" and would, therefore, be of "incalculable benefit to men, women and children alike".[15] Despite the objections raised by "the National Council [of Women of Canada] as well as the Canadian Bar Association", Murphy argued that "the time [had] come" for "adjusting the rights and responsibilities of the marriage contract".[16]

Murphy anticipated that "difficulties [would] arise at every point", but insisted that nothing short of a radical restructuring of matrimonial property laws would satisfy the desired goal of "legal recognition of women's economic status".[17] For, she warned, "[t]here is no doubt our [present] plan is weak and sags in the middle":[18]

> No longer should we concern or content ourselves with the mere re-shuffling of the matrimonial cards in that old and ever odious game popularly described as 'beggar my neighbour'. The whole position [of husband and wife] should be summed up in three words: community of interests.[19]

Less is known of the individual positions taken by the remaining members of the committee on the question of the married woman's property rights. Henrietta Muir Edwards was a strong supporter of the Dower Act which both Parlby and Murphy criticized as being "of little value" in recognizing the economic claims of married women.[20] Although Edwards wrote to

Premier Brownlee on July 15, 1925, urging him to take "immediate action" concerning Parlby's bill she appears to have persisted in the belief that guaranteed "use" of the homestead would satisfy most married women's demands.[21] Indeed, she publicly chastised women like Lillie Young McKinney for what she called their "unfair" attack on the government after "all they had done for women".[22]

Although they had no legal training, Murphy was familiar with the law as a result of her long experience on the provincial court, beginning in 1916, and Edwards had spent the past twenty years studying and writing on the law as it concerned women. As convenor of the U.F.W.A. Laws Committee Wyman probably supported the rural women's position on community of property, at least in so far as they endorsed the partnership principle. Born in Aberdeen, Scotland in 1875, she had immigrated with her family to the United States in 1882, and was educated in Duluth, Minnesota.[23] She and her husband had lived in Bellingham, Washington before settling in Baintree, Alberta in 1918 where she became an active member of the U.F.W.A.[24] In 1925, she moved to Calgary with her husband and lived there until her death in 1941.[25]

Among the committee members three were trained in the law. Duff, a sole practitioner, served the committee as secretary and legal advisor. A native of Montreal, she had moved to Edmonton with her family in 1918 where she attended the University of Alberta graduating in law in 1923.[26] She achieved a degree of notoriety as a "modern Portia" in 1927, when she assisted in the defence of a young woman charged with the murder of her baby.[27]

Ross and De Roussy de Sales were both Calgary barristers. Ross had arrived in the west from his home in Bedeque, P.E.I. in 1899.[28] He worked as a "cowboy" in order to "make enough money to become a lawyer".[29] A graduate of the University of Michigan, he articled with the Calgary firm of Sifton, Short and Stuart before being called to the Alberta Bar in 1906.[30] He was elected to city council in 1911 and 1913 and served as the Liberal Member of Parliament for Calgary East from 1940 to 1945.[31] In addition to practicing law, De Roussy de Sales was French Consul in Calgary and, according to Emily Murphy, the committee's "highest authority on the Swedish Marriage Act".[32]

The members of the advisory committee met for the first time on December 16, 1925, and at irregular intervals thereafter, alternating between Edmonton and Calgary.[33] In 1926 their original mandate to investigate community of property was extended to include "a general consideration of the present property rights of married women" and to recommend such legislative reforms as they felt were necessary or appropriate.[34] The committee was guided in their deliberations by the concerns raised by women's organizations in response to Parlby's bill, and in particular by the interest they expressed in improving the position of the non-wage earning woman who remained in the home following marriage.[35]

In their attempt to address the issues raised by women, the committee examined a wide range of related material including a summary of cases on women's property rights brought before Alberta courts during the previous ten years, existing legislation in the Canadian provinces concerning married women's property rights, community property laws in a number of American states, in particular Louisiana, and in the province of Quebec, as well as recent reforms to the English law of intestacy.[36] Unconvinced of any significant advantages to the wife available under these various property regimes, the committee undertook an examination of an "English translation of a French translation" of the Swedish Marriage Act.[37] This Act, introduced in 1920, had replaced community of property laws in Sweden with statutory "matrimonial rights" limiting the disposition of the "matrimonial property" without the consent of either spouse.[38]

Among the recommendations in the committee's final report, submitted in March, 1928, was a farsighted endorsement of the "procedure of conciliation" found in the Swedish law which, it suggested, "might with benefit be introduced into the laws of Alberta".[39] The purpose of such a programme would be to prevent marriage breakdown by assisting in resolving domestic disputes as they arose. Professional "mediators" would be employed by the provincial government and granted powers to investigate serious disagreements between wife and husband with a view to reconciliation.[40]

Equally attractive to the committee was the custom of agreeing upon a mutually acceptable property arrangement before marriage, which was encouraged under Quebec law. With a view to promoting similar practices in Alberta, the committee recommended that legislation be enacted similar to that in Manitoba and Saskatchewan which recognized the validity of marriage contracts and provided for their registration.[41]

As to community of property, the committee found that:[42]

> While in some respects the economic status of the wife is improved under the best system of community law extant, there are disabilities under the community system which prevent the Committee from recommending the adoption of this legislation at the present time.

Having rejected community of property, the committee went on to suggest that "the time [had] come . . . when a woman's work in the home should receive legal recognition as a valuable service".[43] With this in mind the government was urged to pass legislation guaranteeing both spouses a right to "matrimonial necessaries" including:[44]

> housing, food, wearing apparel, medical and hospital care and generally such allowance in money . . . by one spouse or other as is reasonably adequate or commensurate with the ordinary and necessary needs from time to time of either spouse, having regard to the station in life or style of living of the husband and to the ability, means and private resources of either spouse.

In the case of dispute, the committee further recommended that the court be granted full powers to order payment of "matrimonial necessaries . . . in the same manner as [it would] a judgement for alimony" and that such an order:[45]

> shall take into consideration the manner in which either spouse is discharging his or her duties in the home and the consequences of neglect of such matrimionial duties . . . .

Apart from a commendable, if rather transparent, attempt to eliminate sex/gender bias from their proposed legislation, there was really nothing new, much less radical, in the committee's "Suggested Preliminary Draft Of 'The Matrimonial Maintenance Act'".[46] The husband would continue to be the arbiter of the family's standard of living. "Matrimonial maintenance", derived from common law, was already available to the wife. Extending it to the husband would have de-sexed the law without in any way altering ownership in family property, which was the real issue. Moreover, by linking "matrimonial maintenance" to the satisfactory performance of their separate marital responsiblities, the proposed legislation would simply preserve traditional sex/gender roles. Even the use of the word "maintenance", to which many women strongly objected, perpetuated the old notion of the wife's economic dependence. In short, the committee's suggested reforms were a complete retreat from the changes advocated by women's organizations.

A tentative form of community of property did appear in the committee's final recommendation that:[47]

> the Alberta Dower Act be amended along the lines of the Manitoba Dower Act so as to insure to the wife one-half of the surplus over after a forced sale of a "homestead" under mortgage . . .

Technically, of course, where a mortgage existed homestead dower did not apply. In this case the wife would presumably have consented, or, by the amendment of 1919, would be deemed to have consented to the mortgage and thereby dispensed with her dower right. If, on the other hand, the husband had secured the mortgage under a false affidavit it would be null and void under the Act and any foreclosure or forced sale preventable. Nevertheless, this suggested amendement with its equal division of the proceeds of the sale of the homestead might be taken as a first glimmering of a recognition of the married woman's interest in her own right in family property.

Given the enthusiasm with which at least two members of the committee, Parlby, the chairwoman, and Murphy, had endorsed the community principle only two years earlier, it is difficult to account for this complete retreat from the concept in 1928. The committee itself offered two reasons in its final report. First, it apparently lacked confidence in the proposed legislation since:48

> in other countries where community of property [had] been in force for more than a century, either a change in such laws [had] taken place or [was] being contemplated.

Second, such a reform was seen as politically unacceptable when "public opinion in Alberta particularly among women [was] opposed to community legislation".[49] In particular, the report singled out the "unfair position" taken by some married women who wished "to maintain control of the income from their separate property and their earnings" while being guaranteed a "share in their husband's assets . . . by virtue of their wifehood".[50] The committee rejected this demand as unprincipled and stated that it "could only endorse a system of law" based on "an equal sharing of both assets and liabilities".[51]

Had the political will existed, of course, these obstacles could have been easily overcome as they were on November 29, 1978 when a Matrimonial Property Act was passed into law in

Alberta.[52] Indeed, the committee's failure to recommend community of property in 1928 is all the more puzzling when it precisely foresaw the situation that gave rise to it fifty years later. As mentioned above, the committee was particularly concerned with the property rights of the married woman who worked side by side with her husband in the home and in the fields but was denied the profits of her labour. These were exactly the circumstances presented to the court in the now famous case of _Murdock_ v. _Murdock_.[53] In that case, originating in Alberta, a four-man majority of the Supreme Court of Canada rejected the wife's attempt to prove her entitlement based on her indirect contribution to properties acquired with her husband during their twenty-five year marriage.[54] According to her testimony, with her husband concurring, Iris Murdock had worked on the farm doing "anything that was to be done", including:[55]

> haying, raking, swathing, moving, driving trucks and tractors and teams, quieting horses, taking cattle back and forth to the reserve, dehorning, vaccinating, [and] branding.

In addition, from 1947 until the couple separated in 1968, she ran the ranch herself during the day for some five months of the year while her husband was away from home on other work.[56] Yet, according to the then existing law, the court agreed with the trial judge that "what [Iris Murdock] had done, while living with [her husband], was the work done by any ranch wife" and dismissed her claim.[57] Women across Canada were infuriated by the result and the case acted as a catalyst for legislative reform.

By contrast, it was the spectacle of Lela O'Leary, a young mother separated from her infant children and denied the maintenance with which to support them that galvanized Alberta women into action in 1923. Although feminists like Emily Murphy and Irene Parlby had clearly identified many of the existing legal and cultural impediments to married women's equality, their conservative maternal feminism prevented them seriously challenging existing sex/gender roles. Indeed, their claim to property rights was based on the married woman's right as mother to recognition as an equal partner in the home. Even Lillie Young McKinney who had "stirred . . . women up"[58] with her defense of "community of interest" in the 1920s did so "not especially for the sake of women but to make the home a unit".[59] Thus, while many women could support the concept of partnership in principle, most stopped short of an equal division of the "husband's" property. What they sought was equal status, not economic equality. In the end, feminists' arguments based on home protection superseded the married woman's rights as a result of her individual contribution to the family's assets arising from her work in the home and in the fields.

This, of course, was not entirely an intellectual failing on the part of prairie feminists. It is hardly surprising that women who had themselves been defined as chattels experienced difficulty in asserting their rights to property which legally and culturally belonged to their husbands. In an attempt to break from the past, Murphy offered an alternative view of marriage relationship by comparing it with the legal concept of partnership which, of course, would lead to joint ownership or community of interest. But other, more conservative women, fearing the consequences of their partner's failure to meet his responsibilies, remained wedded to the notion of protection such as was offered by homestead dower. Their fears were not entirely unfounded for even if women had succeeded in reforming what Murphy called "the maladjustment of property rights in marriage" the wife would have continued to be at risk economically.[60]

The debate over the married woman's property rights in Alberta did not end in 1928. Indeed, on the eve of a new decade, Henrietta Muir Edwards, then in her ninetieth year, wrote to Premier Brownlee requesting that he receive a delegation of provincial women seeking an amendment to The Dower Act which would "secure for the widow the use for life of the furniture in her home".[61] The question of sexually discriminating homesteading laws remained on women's agenda until 1931. With the defeat of community of property legislation women's organizations took up the call for wages for homemakers. In addition, as the family home came under increasing threat from economic misfortune, women in Alberta continued to press for improved protections under The Dower Act.

The 1930s did witness a marked retreat from social reform as women and men battled the twin disasters of depression and drought on the prairies. The conservative climate that swept the country made the struggle for equality and special protections for women more difficult. Some women were even temporarily distracted from their feminist goals. Yet, the campaign to improve the position of women continued sporadically as a new generation of feminists prepared to take up the fight with the same patient determination as their sisters.

Conclusion

By 1917 feminists in Alberta had fought for and won dower rights guaranteeing the married woman a voice in the management and control of family property and a life interest in her deceased husband's estate. Yet, many women were left with a sense that the justice they sought had, in the end, eluded them. To paraphrase Henrietta Muir Edwards, the wife still had not got what she wanted.[1] While The Dower Act granted protection to the married woman in her home, it did not extend to her the full recognition of her contribution to the family farm that most women sought.

To a great extent, the dissatisfaction expressed by women was the result of the limited vision of The Dower Act itself. Unlike American homestead dower which granted rights to the wife as part of a larger public policy aimed at attracting settlers to a stable community, the Alberta Act was seen by provincial legislators and those who interpreted them as little more than a concession to women. Although it did, in most cases, have the same effect of securing the family home against economic disaster, this was not the primary purpose of Alberta lawmakers. Their intention was a much narrower one. They sought simply to provide a remedy to deserving wives who were deprived of the security of their home as a result of their husbands' conduct. In this sense, homestead dower in Alberta, and the other prairie provinces, remained well within the tradition of protection and maintenance long established by common law dower. If the Alberta Dower Act can be said to have in anyway recognized the pioneering partnership of women and men in the West, it was partnership by concession and that was no partnership at all.

Disillusioned with the legislation and the interpretation placed on it by the courts, rural women in particular pressed for a more clearly defined right to the wife in the property she had helped to acquire. Farm women argued that justice would not be served until the married woman was guaranteed an equal share of the common wealth of the marriage. With the assistance of Irene Parlby, they succeeded in bringing a community of property bill before the provincial legislature in 1925. However, Parlby's bill was eventually defeated in committee, in part, by some of its leading feminist advocates. It took another forty-six years before a matrimonial property bill guaranteeing both wife and husband an equal share in family property was finally passed into law in Alberta.

To a large extent, the defeat of community of property in Alberta in 1928 can be attributed to the widespread opposition to the bill by both women and men. Quite simply, as the politicians of the day realised, public opinion was against it. Yet, this does not fully explain the complete retreat from matrimonial property of feminists like Emily Murphy and Irene Parlby, who had urged the necessity of radical reforms. Perhaps, in their eagerness to act as responsible judges and legislators, as defined by their male colleagues, they lost sight of their feminist goals. Certainly, for many women the question of the division of family property remained a difficult one.

While most women at the time probably believed they had a right to a "fair share" of the family assets they had helped to acquire, few women were able to specify precisely what their rightful share should be. Indeed, when women referred to the homestead they inevitably described it as the "husband's homestead". Culturally and in law the homestead belonged to the husband. He alone could lay claim to it. Typically, only his name appeared on the title as owner. For most women it was never clear what part of the homestead, if any, the wife could justly lay claim to. Indeed, it was almost as if women felt that to do so was in itself a disloyal act. This may explain why at least one farmers' wife, Elizabeth Clark, wanted the law to do it for her. "Although [her] husband repeatedly told [her] he would give [her her] share. [She] felt that wasn't what [she] wanted. [She] felt [she] wanted the law to grant [women their] share as well as the men."[2]

Women's attempts to articulate their claim to family property between 1909 and 1928 is a disturbing example of the extent to which patriarchal rules of law had influenced women's image of themselves. They felt "humbled" to take what they believed belonged to their husband.[3] Their struggle, which in the end was only partially successful, was in fact part of a much larger fight to free themselves from the "sexual caste system" that Jo Freeman describes as the product of centuries old rules of law that discriminated on the basis of sex alone.[4]

Much remains to be done before historians can begin to see the women's movement in Alberta in its entirety. Yet, if there is a single conclusion that can be taken from the experience of this early generation of provincial feminists it is the need for a third type of feminism, one that can serve as a quide in the struggle for sexual equality while recognizing the practical necessity of special protections for women who remain at risk in a social system that does not yet recognize both the equal and different needs of women.

Notes to Introduction

1. Catherine L. Cleverdon, The Woman Suffrage Movement In Canada (1950; rpt. Toronto: University of Toronto Press, 1974), p. 46.

2. This argument of the frontier as equalizer is derived from the views of the American historian, Frederick Jackson Turner, whose famous essay, "The Significance of the Frontier in American History", was first printed in the Proceedings of the State Historical Society of Wisconsin, December 14, 1893. Turner's thesis that the liberating influence of the frontier experience has been a significant factor in the social and political development of America has provided much fruitful ground for historical enquiry since then. Recently, Turner's frontier thesis has been applied to the experience of women in the American West with contradictory results. In her investigation, Sandra L. Myres, Westering Women and the Frontier Experience 1800 - 1915 (Albuquerque: University of New Mexico Press, 1982), p. 269, concludes that while "the frontier did not offer as many opportunities for women as it did for men, [some] women . . . [took] advantage of the frontier experience as a means of liberating themselves from constricting and sexist patterns of behavior".

3. Ramsay Cook, introd., The Woman Suffrage Movement In Canada, Catherine L. Cleverdon (1950; rpt. Toronto: University of Toronto Press, 1974), p. xvi.

4. For a further discussion of the limitations of the frontier thesis as a complete explanation of the position of women see Deborah Gorham, "Singing Up The Hill", in Canadian Dimension, 10, 8 (1975), pp. 26-38.

5. Paul Voisey, "The 'Votes for Women' Movement", in Alberta History, 23, 3 (1975), pp. 10-23.

6. Carol Bacchi, "Divided Allegiances: The Response of Farm and Labour Women to Suffrage", in A Not Unreasonable Claim, ed. Linda Kealey (Toronto: The Women's Press, 1979), pp. 460-74.

7. Veronica Strong-Boag, "The Parliament of Women: The National Council of Women of Canada 1893 - 1929" (Ottawa: National Museums of Canada, 1976), p. 157.

Notes to Chapter 1

1. John Stuart Mill, The Subjugation of Women (1869; rpt. New York: Stokes, 1911), p. 175.

2. Jo Freeman, "The Legal Basis of the Sexual Caste System", Valparaiso University Law Review, 5, 2, Symposium Issue, (1971), p.208.

3. See Leo Kanowitz, Women And The Law: The Unfinished Revolution (Albuquerque: University of New Mexico Press, 1968).

4. Kanowitz states that "even . . . [where] the most dramatic improvement of the married woman's inferior common law position has occurred, significant pockets of rules and decisions continue to preserve the effects, if not the rational, of the old common law", p. 199.

5. On the origins of patriarchy Simone de Beauvoir, The Second Sex (1952; rpt. New York: Vintage, 1974), p. 70, states that "however strong the women [in nomadic societies] were, the bondage of reproduction was a terrible handicap in the struggle against a hostile world. Pregnancy, childbirth, and menstruation reduced their capacity for work and made them at times wholly dependent upon men for protection and food". Recent feminist scholars have turned their attention to a more fruitful exploration of the political purposes served by patriarchal social structures. Among them Jill McCalla Vickers, "Sex, Gender and the Construction of National Identities", Reaching Out: Canadian Studies, Women's Studies and Adult Education, 6, (1984), pp. 34-49, argues convincingly that "patriarchy as a technology for the organization and replication of human groups . . . [seeks to maintain] the autonomy, cohesion, continuity and identity of groups . . . [by] severely limiting the autonomy, freedom of choice and social adulthood of [women as] the group's physical and social reproducers", pp.38-39.

6. For a further discussion of the view of women in Western philosophy see Susan Moller Okin, Women In Western Political Thought (Princeton: Princeton University Press, 1979).

7. The traditional view of women as a subject and passive sex was first challenged by Mary R. Beard, Woman As Force In History (New York: Collier, 1946). Becoming Visible: Women In European History, ed. Renate Bridenthal and Claudia Koonz (Boston: Houghton Mifflin, 1977) offers a more contemporary discussion of the continuing debate concerning the role of women in history.

8. For instance, during the Late Roman Empire women benefited from a general relaxation of marriage and property laws intended to reinvigorate a declining patrician population. See Sarah B. Pomeroy, Goddesses, Whores, Wives and Slaves (New York: Schoken, 1975). Under the Carolingian rulers, Frankish Women experienced legal and social reverses when the church and monarchy temporarily co-operated to strengthen their power. See Suzanne Fonay Wemple, Women in Frankish Society (Philadelphia: University of Pennsylvannia Press, 1981). In his comparative study Roger Thompson, Women in Stuart England and America (London: Routledge and Kegan, 1974), p. 5, concludes that as a result of legal and social discrimination "the Stuart era was one of the bleaker ones for women . . . certainly a decline from the Tudor led Renaissance".

9. Catherine A. MacKinnon, "Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence", Signs, 8, 4, Summer (1983), pp. 635-658, argues that the limitations of man-made laws goes beyond paternalism to include a male group interest.

10. Under the Common Law of England the promise of marriage was sufficient to suspend a woman's legal rights since any disposition of her property either by gift or investment without the consent of her intended husband was held to be a fraud on his marital rights. See Erna Reiss, Rights And Duties Of Englishwomen (Manchester: Sherratt and Hughes, 1934), p. 19.

    It should be noted that the concept of "civil death", often used to describe the condition of the married woman under common law, is particularly known in European (and Quebec) cvil law systems, where convicted criminals were deemed to be "dead" for all purposes of civil law.

11. Freeman, supra note 2, p. 208. The tradition of the Perpetual Tutelage of Women is also discussed in Not In God's Image, ed. Julia O'Faolain and Laura Martines (New York: Harper and Row, 1973), p. 9.

12. See Henry Sumner Maine, Ancient Law (London: Murray, 1916), p. 135, for a discussion of the concept of the Greek family as "perpetual and inextinguishable".

13. Freeman, supra note 2, p. 208. According to Pomeroy the more war-like the state the less repressive were its laws concerning women. For example, in Sparta and Gortyn, where men were often absent for long periods of time, women remained at home where they managed and controlled family property. "By the fourth century B.C. women controlled by means of their dowries and inheritances two-fifths of the land and property of Sparta", supra note 8, p. 38.

14. O'Faolain and Martines, _supra_ note 11, p. 9.

15. This view of women's social role is expressed in rather stark terms by the primitive poet, Hesiod, who advises prospective farmers to "[f]irst of all get a house, and a woman, and a ploughing ox", Okin, _supra_ note 6, pp. 15-16. Demosthenes is equally candid in his account of the lawsuit, _Against Naera_, in which he states, "[m]istresses we keep for the sake of pleasure, concubines for the daily care of our persons, but wives to bear us legitimate children and to be faithful guardians of our household", _ibid_., p. 20.

16. O'Faolain and Martines, _supra_ note 11, p. 13.

17. _Ibid_., p. 12. It should be noted that Ancient Greek and Roman law provided that for the purposes of inheritance a man's surviving adopted son took precedence over his birth daughter. According to Main this was a common occurence and the Roman family "was constantly adulterated by the practice of adoption", p. 138.

18. O'Faolain and Martines, _supra_ note 11, p. 13.

19. _Ibid_., p. 14.

20. _Ibid_., p. 20.

21. For a further description of the structure of the _pater familias_ and the powers of the father see Main, _supra_, note 12, pp. 142-52.

22. O'Faolain and Martines, _supra_, note 11, p. 34. Main also discusses the decline of the _patria potestas_, _supra_ note 12, pp. 148-49.

23. According to Main the tutelage of males was terminated at an early stage since sons were capable of founding a new _patria potestas_ but "no such capacity was possessed by the woman, and therefore she was never enfranchised", _supra_ note 12, p. 165.

24. O'Faolain and Martines discuss the institution of manus, _supra_ note 11, p. 42.

25. Freeman, _supra_ note 2, p. 208. Also see Main, _supra_ note 12, p. 165.

26. O'Faolain and Martines, _supra_ note 11, p. 41.

27. _Ibid_.

28. Gaius goes on to say that in spite of the fact that women exercised greater personal freedom during this period "the common opinion that because of their levity of

disposition they are easily deceived and it is only just that they should be subject to the authority of guardians . . ." prevailed, ibid., p. 44.

29. Ibid., p. 62.

30. Of these the "matronae" were among the most privileged women in Ancient Rome. As daughters of the senatorial class and mothers or potential mothers of future generations they were held in high esteem and expected to live circumspect lives. Any man who took a Roman matron for his mistress could be prosecuted for vice. The adulterous wife suffered the loss of property and banishment. See O'Faolain and Martines, supra note 11, pp. 51-64.

31. Although the direct parallel which Main draws between the "operation and nature of the ancient Patria Potestas" and the "prerogatives attached to the husband by the pure English Common Law" is undoubtedly exaggerated, male power and authority was preserved by rules of law concerning marriage and inheritance which were traditionally administered by ecclesiastical courts. For a further discussion of the development of common law see, Frederick Pollock and Frederick William Maitland, The History of English Law, 2nd ed. (Cambridge: Cambridge University Press, 1898).

32. Pearl Hogrefe, Tudor Women: Commoners and Queens (Ames, Iowa: Iowa State University Press, 1975), p. 10.

33. Ibid.

34. Pollock and Maitland, supra note 31, p. 482. In feudal times women did hold elected and inherited office and continued to exercise authority as sextons, churchwardens and "overseers of the poor" long after the rules limiting their public role were firmly established in the thirteenth century, Hogrefe, supra note 32, pp. 27-39. However, it was widely held that women lacked sufficient intelligence, independence and responsibility necessary to the performance of these duties. The complete disenfranchisement of women was finally achieved in England by the Reform Act of 1832 which restricted public participation to "male persons", Reiss, supra note 10, p. 41.

35. Kanowitz discusses the legal status of the "Single Girl", supra note 3, pp. 7-34. It should be noted that by the fifteenth century English law provided that a married woman with the consent of her husband could declare herself a feme sole for the purpose of conducting her own business. This practice was apparently wide spread in the city of London. See Hogrefe, supra note 32, p. 39. See also O'Faolain and Martines, supra note 11, p. 146.

36. Under the rule of primogeniture, which persisted in some form in England until the nineteenth century, the eldest son and only the eldest son succeeded. The other children had no share in the inheritance. This rule required the disinheritance of all of a man's daughters if he left surviving him at least one son. See Kanowitz, supra note 3, p. 261, note 1.

37. Pollock and Maitland, supra note 31, p. 485.

38. O'Faolain and Martines, supra note 11, p. 145.

39. Pollock and Maitland, supra note 31, p. 485.

40. The following is from William Blackstone, Commentaries On The Laws Of England, ed. George Tucker (1765-1769; rpt. Philadelphia: Young Birch and Small, 1803), p. 442.

41. "And Adam said, this is now bone of my bones, and flesh of my flesh; she shall be called Woman, because she was taken out of man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife and they shall be one flesh." See Genesis, II, 22-23.

42. Kanowitz, supra note 3, p. 36.

43. The following is from Reiss, supra note 10, p. 6. The footnotes have been added by the author.

44. In legal terms, her consortium, including her "companionship, love, affection, comfort, mutual services, sexual intercourse". Thus, it was held that a husband could not be guilty of raping his wife "for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract". See A Century of Family Law, eds. R.H. Graveson and F.R. Crane (London: Sweet and Maxwell, 1957), p. 181.

45. An unmarried mother, on the other hand, "had no claim on the father of her child, and the only time he could ever be called upon to contribute to the maintenance of the child was where she was incapable of doing so.", Reiss, supra note 10, p. 19.

46. For a discussion of the impact of marriage on the husband, see Reiss, supra note 10, pp. 8-15.

47. A married woman could take action against her husband's mistress but if she succeeded in obtaining a financial settlement it became her husband's since "whatever accrues to the wife during coverture belongs to the husband", Reiss, supra note 10, p. 15.

48. Ibid., p. 11

49. Ibid., p. 15.

50. Ibid., p. 8.

51. Notorious for revealing the most sordid and intimate details of domestic life, these cases often became a source of public amusement. According to the Marquess of Lansdowne, "one of the earliest of such cases occurred in the reign of Charles the Second, and that monarch is stated to have attended every day's proceedings, and to have declared that he found it quite as entertaining as a play", Graveson and Crane, supra note 42, p. 7.

52. Canon law traditionally emphasized the moral behavior of the wife over that of the husband. In England ecclesiastical courts exercised exclusive jurisdiction over matrimonial law until 1857 and even after the Divorce and Matrimonial Causes Act of that year, the new secular courts tended to adopt the old principles of canon law. Thus, on the subject of adultery as grounds for divorce a typical opinion was expressed by Lord Campbell, a member of the House of Lords, who stated that "[n]o doubt the crime in both cases is essentially the same; but the consequences are not the same. When adultery is committed by the woman all the purposes of the marriage are forever annulled, and there can be no condonation on the part of the husband." See Graveson and Crane, supra note 42, p. 10. Forgiveness on the part of the wife however, was conidered meritorious, in the view of Sir Nicholl, also a member of the House of Lords, especially a wife "with a large family, in the hope of reclaiming her husband . . . . While a similar forgiveness on the part of the husband would be degrading and dishonourable." See Reiss, supra note 10, p. 54

53. Ibid., p. 45. Furthermore, the court held that "if [the wife] has once forgiven, or, in legal phrase 'condoned' [her husband's] offences, she cannot plead them." See O'Faolain and Martines, supra note 11, p. 325.

54. The following is from Graveson and Crane, supra note 42, p. 82.

55. Reiss, supra note 10, p. 45. Coleridge's judgement in R. v. Cochrane [1840] 8 Dowl. 630, is also reproduced in part in O'Faolain and Martines, supra note 11, pp. 318-19.

56. The following is from Graveson and Crane, supra note 42, p. 178.

57. Reiss, supra note 10, p. 179.

58. Ibid., p. 45. The husband's right to interfere with

his wife's personal freedom was finally overturned in England in *R*. v. *Jackson* [1891] 7 T.L.R. 382.

59. *Ibid*., pp. 36-37. The wife's immunity gave rise to the rule that a husband could be charged for a crime committed by his wife in his presence, Kanowitz, *supra* note 3, p. 37.

60. Reiss, *supra* note 10, p. 36.

61. *Ibid*. Opinion as to the precise source of the married woman's duty to protect her husband varied. Coke stated that "by the law divine a wife is not bound to discover the offence of her husband" but another early source states that "a wife ought not to accuse her husband, nor to disclose his theft or felony, since she has not any power over herself." See Graveson and Crane, *supra* note 42, p. 170.

62. Reiss, *supra* note 10, p. 37.

63. Kanowitz, *supra* note 3, p. 36.

64. *Ibid*.

65. *Ibid*., pp. 20-21. The married woman's paraphanalia (clothing, jewellry, furniture, etc.) reverted to her possession after her husband's death, but then only if it was not required to satisfy his creditors. See Margaret Morrison Midgley, "Legal Status Of Women In England And Canada", Masters of Laws Thesis, University of Alberta, 1976, p. 6.

66. Reiss, *supra* note 10, pp. 21-22.

67. Midgley, *supra* note 64, p. 135.

68. Kanowitz, *supra* note 3, p. 36.

69. *Ibid*. See also A.C.H. Barlow, "Gifts and Other Transfers Inter Vivos and the Matrimonial Home", in Graveson and Crane, *supra* note 42, pp. 197-226.

70. Reiss, *supra* note 10, p. 31. Thus a married woman could not sue her husband for the loss of her property. See C.A. Morrison, "Contract", in Graveson and Crane, *supra* note 42, pp. 116-142.

71. Reiss, *supra* note 10, p. 22. See also Graveson and Crane, *supra* note 42, pp. 88-104.

72. A. V. Dicey, *Law And Public Opinion In England* (London: MacMillan, 1905), p. 369.

73. Reiss discusses the right of the married woman to maintenance and protection, *supra* note 10, pp. 8-12.

74. For instance, a deserted wife whose husband failed to provide adequate support became an "agent of necessity" and could pledge her husband's credit without his consent. See Reiss, supra note 10, p. 10. However, under these circumstances merchants were probably reluctant to extend credit to a married woman. The wife's agency could be defeated on several grounds, among them where it was shown that the husband had forbidden the wife to pledge his credit. See Midgley, supra note 64, p. 86. At common law, the adulterous wife automatically forfieted her right to maintenance.

75. Reiss, supra note 10, p. 9.

76. Ibid.

77. The following is taken from the judgement of Mr. Justice Willes in Phillipson v. Hayter [1870] 6 C.P. 38, which is misquoted in Midgley as Phillips v. Hayter, supra note 64, p. 87.

78. In legal terms the married woman was an "agent at will", Reiss, supra note 10, p. 9.

79. Kanowitz, supra note 3, p. 71.

80. For a more detailed history of common law dower see George L Haskins, "The Development of Common Law Dower", (1948-49) 62 Harv. L. Rev. 42.

81. As the rules of common law prohibited the husband from making a gift of land to his wife during marriage, dower was part of the marriage settlement and came to signify the public declaration of a man's intention to marry. Haskins describes dower as "essentially the fullfillment of a bargain which [the husband] had previously made with [his wife] or with her kinsmen" and states that during Anglo-Saxon times "if no specific gift had been agreed upon at the betrothal, the law gave the widow an undivided portion of her husband's property, usually one-third", ibid., p. 43. It is important to note here the difference between dower, the husband's gift to the wife, and dowry, the wife's gift to her husband.

82. Haskins, supra note 79, p. 46.

83. As Haskins points out, it is notable that dower did persist against the anti-feudal tendency of the thirteenth century to assert the husband's freedom to alienate his land by sale during his lifetime or by will. Moreover, dower conflicted with the claims of the heir and the lords rights of wardship and were "a perpetual clog on the marketability of land at a time when land was

coming to have a value in commerce", supra note 79, p. 48. According to Michael M. Sheehan, "The Influence of Canon Law on the Property Rights of Married Women in England", in Mediaeval Studies, 25 (1963), p. 114, the role of the ecclesiastical courts in defence of the married woman's property rights during this period may in part account for the survival of dower even in its reduced form. Undoubtedly the efforts of canonists on behalf of the married woman was in part a reflection of their concern for her capacity to make gifts of alms to the church without her husband's consent.

84. Attempts to defeat the wife's dower must have been fairly common since Parliament felt compelled to provide a statutory remedy to widows in 1285. See Haskins, supra note 79, p. 51, note, 50.

85. Ibid.

86. Ibid. At common law the married man received an equivalent estate in the property of his deceased wife which was known as the husband's curtesy. However, his estate existed in all of his wife's lands, not just one third, and his curtesy was conditional upon the birth of live issue capable of inheriting their mother's estate. See Reiss, supra note 10, p. 27. Both dower and curtesy were abolished in England in 1925. See Midgley, supra note 64, p. 148.

87. This represented a set back for the married woman who by custom had received one-third of her husband's chattels. During the fourteenth century the husband established his testamentary powers over his chattels and "[b]y Elizabeth's time . . . it was only in the distribution of the property ~~of~~ the intestate [those who died without a will], a distribution supervised by the bishop, that a portion of the husband's moveables was reserved to his wife". See Sheenan, supra note 82, p. 123.

88. This provision did not attach to the husband's curtesy "since there is no act inflicting . . . the forfeiture of a tenancy by the curtesy". See Reiss, supra note 10, p. 27

89. Sheenan, supra note 82, p. 115.

90. This custom was reinforced by statute in 1285. See ibid., p. 115.

91. The husband's estate by the curtesy also terminated with the marriage.

92. "Report on An Examination of 'The Dower Act'", Law Reform Commission of Manitoba (1984), p. 3.

93. The Dower Act, 3 & 4 Will. IV, c. 105.

94. Ibid., s.v.

95. Ibid., s. iv.

96. The following is from Blackstone, supra note 39, p. 445.

97. In a chapter entitled "Blackstone Extinquished The Married Woman's Personality" Beard, supra note 7, pp. 88-90, attributes Blackstone's distortion of the legal status of women in England to his "love of the strict injunction of the common law".

98. Graveson and Crane, supra note 42, p. 198.

99. See Kanowitz, supra note 3, pp. 38-40.

100. Ibid., p. 38.

101. Reiss, supra note 10, p. 24.

102. Ibid. The wife's equity to a settlement was not a property right but only provided that the wife could request that the court force the husband to act equitably. Thus, the wife's right depended upon her taking action against her husband and relied on the court to act in her interest. Moreover, the wife's right to equity could be defeated by her marriage settlement. Over time the wife's equity to a settlement could be claimed by her children following her death.

103. Ibid.

104. According to one interpretation it was "found necessary for the interest of society that means should exist by which either the parties themselves by contract or those who intend to give a bounty to a family may secure that for the benefit of the wife and children without it being subject to the control of the husband", Reiss quoting the court in Ritchie v. Rennie [1845] 12 Cl. & Fin. 204, supra note 10, p. 234.

105. Dicey states that "[t]here came, therefore, to be not in theory but in fact one law for the rich and another for the poor. The daughters of the rich enjoyed, for the most part, the considerate protection of equity, the daughters of the poor suffered under the severity and injustice of the common law", supra note 71, p. 381.

106. Reiss, supra note 10, p. 26.

107. Dicey, supra note 71, p. 231.

108. In other words, a married woman's contract bound her property not her personally. Her liability was charged to a particular estate which belonged to her at the time the debt was incurred and any property she acquired at a later date could not be held liable to satisfy the debt, Reiss, _supra_ note 10, p. 33.

109. Equal property rights for married women were among the early reforms sought by women in the nineteenth century, in large part because the obvious injustice of women deprived of income earned by their own labour caught the public imagination and created wide-spread sympathy for their claim. According to Barbara Leigh Smith, author of _Lawes Concerning Women_ (1856), "not that these laws of property are the only unjust laws concerning women to be found . . . but they form a simple, tangible and not offensive point of attack". See Reiss, _supra_ note 10, p. 124.

110. _Ibid._, p. 134. The example of equity was the obvious precedent available to reformers since matrimonial property or shared ownership by both husband and wife was unknown to English law. See Graveson and Crane, _supra_ note 42, p. 199.

111. _An Act to enable married Women to dispose of Reversionary Interests in Personal Estate_, 20 & 21 Vict. c. 57.

112. 20 & 21 Vict. c. 85.

113. _Ibid._, s. xxi.

114. Dicey, _supra_ note 71, p. 382.

115. 33 & 34 Vict. c. 93, s. 1. The first Married Women's Property Act was passed in the state of Mississippi in 1839. According to Lawrence M. Friedman, _A History of American Law_ (New York: Simon & Shuster, 1973), "the real point of the [American] statutes was to rationalize more cold-blooded matters, such as the rights of creditors to collect debts out of land owned by husbands, wives or both", p. 186.

116. Reiss, _supra_ note 10, p. 133. Under the Act a married woman's separate property consisted of any income that she earned as a result of employment carried on separately from her husband or through her "literary, artistic or scientific skills", monies arising out of certain kinds of investments, any personal property she inherited, or rents and profits from her real property, s. 1.

117. _Married Women's Property Act_, s. 7.

118. Olive Stone, "The Status of Women in Great Britain," (1972) 20, 4, Fall, Am. J. Comp. L., 592 at 594.

119. Reiss, supra note 10, p. 133.

120. Ibid. Minor changes were made to the 1882 Act in subsequent legislation in 1884, 1893, 1907, and 1908.

121. Although, following the example of equity, a married woman's liability continued to attach to her separate property and not to her personally. Full contractual capacity was not granted the married woman in England until 1935 when the Law Reform (Married Women and Tortfeasors) Act was passed, Midgley, supra note 64, p. 41.

122. But "no husband or wife shall be entitled to sue the other for a tort", s. 13. This remnant of the fiction of legal unity, which remains in force in Alberta to this day, was only abolished in England with The Law Reform (Husband and Wife) Act of 1962, ibid., p. 46.

123. Curiously, the Act did not affect the married woman's position in relation to her paraphanalia. She still had no right to such property until widowed, ibid., p. 33.

124. 45 & 46 Vict. c. 75 s. 2.

125. The following is from ibid., s. 1(1). Although the Act increased the married woman's testamentary powers, they remained less than those of her husband since she could only dispose of property she became entitled to before or during her coverture, but not after. See Midgley, supra note 64, p. 33.

126. Commenting on the new legal status of the married woman in England de Montmorency wrote somewhat precipitously, "[t]ime brings its revenges even to women . . . [and] one might almost now say, inverting Rousseau's famous phrase: woman was born in chains, and behold now on every side she is free". See Graveson and Crane, supra note 42, p. 16.

127. Reiss, supra note 10, p. 139.

128. Reiss, supra note 10, p. 138. See also Graveson and Crane, supra note 42, p. 200. This situation was reversed in England by the Law of Property Act of 1925 which stated that in the case of a gift of property a husband and wife shall be treated as two persons.

129. Midgley quoting Cyprean Williams, "Husband's Liability for Wife's Torts" (1900), supra note 64, p. 40. For a further discussion of the impact of judical decisions on the married woman's property rights see Graveson and Crane, supra note 42, pp. 201-03.

130. Reiss, supra note 10, p. 131.

131. Graveson, quoting Mr. Justice Coleridge in R. v. Cocherane [1840] 8 Dowl. 630, Graveson and Crane, supra note 42, p. 16.

132. Midgely, supra note 64, p. 34.

133. The Alberta Act S.C. 1905, c. 3, preserved the existing law then in force in the Northwest Territores. See the North-West Territories Act S.C. 1886, c. 25.

134. On July 15, 1870 Rupert's land and the Northwest Territories were admitted to Canada pursuant to the Rupert's Land Act. Until February 18, 1887, the law in force in Rupert's Land and the Northwest Territories generally was the law of England on May 2, 1670, being the date of the charter of the Hudson's Bay Company. A new date for the entire Northwest Territories was fixed by the North-West Territories Act of 1886, which went into force on February 18, 1887 and provided that the laws of England relating to civil and criminal matters, as they existed on July 15, 1870, were to be in force in the Territories in so far as they were applicable to the Territories. See Anger and Honsberger Law of Real Property, 2nd ed., by A.H. Oosterhof and W. B. Rayner, Vol. 1 (Canada Law Book Inc., 1985), pp. 72-73.

135. Leslie A.E. Savage, "Infanticide, Illegitimacy And The Origins And Evolution Of The Role Of The Misericordia Sisters, Montreal And Edmonton; A Study In Child Rescue And Female Reform", M.Ed., University of Alberta (1982), p. 113.

136. C.O. 1898, c.47 s.1, originally No. 20 of 1890, s.c. An act extending separate property rights to married women was passed in Alberta in 1906. Restraints on anticipation were not affected by the Act as it was still possible to restrain a married woman's ability to dispose of her property. According to Oosternoff and Rayner, "Alberta appears to be the only jurisdiction which still permits restraints on anticipation or alienation to be created against the property of married women", supra note 132, p. 838.

137. The adoption by a woman on marriage of her husband's surname appears to be a matter of custom in keeping with the common law principle that a married woman had no legal existence apart from her husband. However, according to Midgley, supra note 64, pp. 65-66, "despite the absence of legal authority, it is tacitly implied in some legislation and administrative practices that a married woman's official name is that of her husband and the obstacles in the path of any married woman who attempts to assert to the contrary are considerable".

138. The rule that stated that a wife's nationality followed that of her husband's was created by statute during the nineteenth century and was abolished in England in 1948 and in Canada in 1946. See Midgley, supra note 64, p. 70.

139. For a further discussion of the unity of domicile see Midgley, supra note 64, pp. 74-75. At common law, a married woman was not only compelled to live with her husband, she could be guilty of desertion if he moved and she refused to move with him, Freeman, supra note 2, p. 211.

140. J.L. Barton in Graveson and Crane, supra note 42, p. 352, describes the position of children at common law as evolving out of proprietary interests, therefore, "guardianship went to the person entitled to it according to the rules governing the tenure by which the land was held . . . . If the infant had no land, then the common law was not concerned with him". However, the father's parental rights were also consistent with the supremacy of the husband at common law and the accepted view of him as head of the household. The father's authority over his children extended beyond the marriage and indeed, continued after his death since he was free to appoint a guardian over them.

Equal parental rights were achieved in Alberta by amendement to The Infants Act in 1920. See Henrietta Muir Edwards, Legal Status of Women in Alberta, 2nd ed. (Attorney General of Alberta, 1921), p. 41. An unmarried woman on the other hand was solely responsible for her illegitimate child and following the passing of the Poor Law Act in England in 1834, "every child that be born a bastard . . . shall have and follow the settlement of the mother . . . and such mother so long as she be unmarried or a widow, shall be bound to maintain such child". See Reiss, supra note 10, p. 19. By the same act a man was held responsible for any illegitimate children of the woman he married.

141. In addition, divorce courts, as they existed in England were never established in Alberta. The British North America Act, 1867 gave the Dominion Parliament exclusive jurisdiction in matters of divorce which could be obtained either by special Act of Parliament or, after 1905, by application to the Supreme Court of Alberta. Grounds for divorce followed the English Act as of July 15, 1870 which included adultery for the husband and incestuous adultery, bigamy with adultery, rape, sodomy, bestiality or adultery coupled with cruelty or desertion for two years for the wife. In 1917 the cost of a Dominion divorce was approximately two thousand dollars and between three hundred and five hundred dollars if obtained through the courts, Edwards, supra note 138, p.24.

142. Freeman, supra note 2, p. 211.

143. Territories Real Property Act, S.C. 1886, c. 26. Both dower and curtesy were abolished by the Act.

144. See Wilbur F. Bowker, "Reform Of The Law Of Dower In Alberta", (1961) 1 Alta. L. Rev. 501.

145. For a further discussion of the Torrens system of land registration see James Edward Hogg, "Australian Torrens System (1905)" (1955 - 1956) 1 Alta. L. Rev. 192.

146. Catherine L. Cleverdon, supra introd., note 1, p. 67.

Notes to Chapter 2

1. Reproduced in A Harvest Yet To Reap, ed. Linda Rasmussen et. al. (Toronto: The Women's Press, 1976), p. 150.

2. For an excellent synopsis of the homesteads-for-women movement see the introduction to Susan Jackel, ed., Wheat and Woman, by Georgina Binnie-Clark (Toronto: University of Toronto Press, 1979), pp. xx-xxxi.

3. See S.A. 1931 c. 43, s. 15(1). In Saskatchewan and Manitoba homesteading privileges were abolished altogether while Alberta amended its legislation to read "person".

4. For a discussion of the developments in Canadian feminism see the introduction to Linda Kealey, ed., A Not Unreasonable Claim (Toronto: The Women's Press, 1979), pp. 1-14.

5. See The Dominion Lands Act of 1872 which governed the alienation of public lands in the vast western territories acquired from Britain in 1870.

6. The status of single mothers with dependent children does not appear to have been raised in the course of the debate over homestead laws.

7. S.C. 1872 c. 23, s. 33.

8. The following is from Jackel, pp. xxv-xxvi.

9. Ibid., p. xxvi.

10. Leslie May Robinson, "Agrarian Reformers: Women And The Farm Movement In Alberta 1909-1925", M.A. Thesis (University of Calgary, 1979), p. 13. According to the Canadian Census women represented approximately 1.5% of the total number of people employed in agriculture in Alberta in 1911. Of those who described themselves as farmers or farm labourers in 1921 approximately 1.4% were women. During this same period American Census figures indicate that two to three times that percentage of women were gainfully employed on farms in western states where homesteading laws did not discriminate by sex. According to a contemporary observer quoted by Myers, supra introd., note 2, p. 258, homesteading was so popular among young women on the American frontier that by the turn of the century one-third of the land in the Dakotas was held by women.

11. Ibid.

12. Georgina Binnie-Clark, Wheat and Woman, introd. Susan

Jackel (Toronto: University of Toronto Press, 1979). Although Binnie-Clark's Union Jack Farm Settlement on the outskirts of Fort Qu'Appelle, Saskatchewan was financed by her father, concern over operating costs is a recurring theme in this account of her first three years in the Canadian West.

13. Even the usually tolerant Roddy McMahon, Binnie-Clark's dedicated hired man, took exception when his employer decided to help "stone" the land; "I guess you'll get them out all right [he conceded] - but it ain't no work for a woman", ibid., p. 146.

14. The following is from Jackel, supra note 6, p. xxvi.

15. According to Lewis H. Thomas, "A History of Agriculture on the Prairies to 1914", The Prairie West, ed. R. Douglas Francis and Howard Palmer (Edmonton: University of Albera Press, 1985), The NorthWest Territories farming population could be measured in the hundreds in 1871 but amounted to 31,000 in 1885, and 164,000 in 1901. The decade 1901-11 exhibited the most dramatic growth in population when the number of people living in Western Canada rose from 419,000 in 1901 to 1,328,000 in 1911. p. 231. Comparative figures show that in 1901 54,000 Albertans lived in rural areas as compared with 19,000 who described themselves as urban. The rural/urban balance showed a similar distribution ten years later when 366,000 people were living in the country and 223,000 occupied towns and cities. By 1931 over 60% of the province's population was still rural. See Paul Voisey, "Urbanization of the Canadian Prairies, 1871-1916", ibid., p. 390.

16. For a further discussion of women and work in turn-of-the-century Alberta see The Last Best West, ed. Elaine Leslau Silverman (Montreal: Eden Press, 1984), pp. 105-124 and Flannel Shirts and Liberty, ed. Susan Jackel (Vancouver: University of British Columbia Press, 1982).

17. See Savage, supra c.1, n. 133, pp. 14-16.

18. In 1911 of all women over the age of 25 years 87.4% were married. In 1921 87.6% were married and 90.7% of all women between the ages of 30 and 39 years were married. See Census of Canada, 1911 and 1921.

19. Canadian census figures for this period do not provide a breakdown of the number of married women working outside the home. However, in 1911 women represented only 7.3% of the province's total workforce. Of the total number of people "gainfully employed" in Edmonton and Calgary in 1921, slightly more than one quarter were women but women accounted for only 16.5% of total yearly earnings despite the fact that they worked more hours than men.

20. The social dislocation resulting from desertion was considered such a serious problem by 1922 that the United Farmers' government anticipated making it an extraditable offence.

21. PAA, Attorney General's papers, item #1256b.

22. _Ibid_.

23. CEA, Emily Murphy's personal papers, file #8.

24. The following is from _ibid_.

25. _Ibid_.

26. PAA, Attorney General's papers, item #1107a.

27. _Ibid_.

28. _Ibid_.

29. PAA, Attorney General's papers, item #1256b.

30. _Ibid_.

31. _Ibid_.

32. _Ibid_.

33. _Ibid_.

34. _Ibid_., item #1256a.

35. _Ibid_., item #1106.

36. _Ibid_., item #1256a.

37. The following is from CEA, Emily Murphy's personal papers, file #8.

38. PAA, Attorney General's papers, item #1256b.

39. Rasmussen et. al. _supra_ note 1, p. 158.

40. _Ibid_.

41. _Ibid_.

42. The following is from _ibid_.

43. _The Intestate Succession Act_, S.A. 1920, c. 11, provided that where a man died without a will his widow received one third of his estate with the balance to be divided equally among his surviving children. If there were no

children the widow received her husband's entire estate unless he had disposed of it before his death or by will. See also An Act Respecting The Transfer And Decent Of Land, S.A. 1906, c. 19, s. 2, 11, 12, 13, 14, and An Act Respecting The Devolution Of Estates, O.N.W.T., 1901, c. 3.

44. PAA, Attorney General's papers, item #4/263.

45. A complete biography of Henrietta Muir Edwards has yet to be written. The details of her life and career that appear here have been taken from Carol R. Wolter, "The Life and Times of a 'Valiant Person'", n.p.

46. Edward's book served as a valuable resource for women concerned with the law for many years. When the first printing of 3,000 copies sold out it was reissued in 1921 under the auspices of the Attorney General for the Province of Alberta.

47. Henrietta Muir Edwards, Preface, Legal Status of Women in Alberta, (National Council of Women of Canada, 1917).

48. For biographical information concerning Emily Murphy the author has relied on Bryce Hope Sanders, Emily Murphy Crusader (Toronto: MacMillan, 1945). Somewhat dated, this is the only complete work currently available.

49. Cleverdon, supra introd., note 1, p. 69. Both Cleverdon and Sanders refer to a dower act of 1911 however, the author has found no evidence for the existence of such an act. The first dower act in Alberta was passed in 1917.

50. Journals of the Legislative Assembly, vol. 6, p.49. There does not appear to be a copy of this bill in existence however, it is likely that its main thrust was to limit the husband's freedom to dispose of his property during his lifetime or by will since these were Murphy's main criticisms of existing legislation.

51. Ibid., p. 72.

52. S.A. 1910 c. 18. As has been noted statute law provided that where a man died without a will and there were no children his widow received his entire estate.

53. Sanders, supra note 47, p. 122.

54. The following is from ibid.

55. See Olive M. Stone, Canadian Women As Legal Persons 17, 3 Alta. L. Rev. (1979) 331.

56. Edmonton Bulletin, Oct. 28, 1911, p. 13.

57. Ibid., Jan. 27, 1912, p. 3.

58. Sanders, supra note 47, p. 121.

59. Reproduced from the Grain Growers Guide (1909) in Rasmussen et. al., supra note 1, p.162.

60. Ibid.

61. Ibid.

62. CEA, Emily Murphy's personal papers, Scrapbook 4, p. 21.

63. PAA, Attorney General's papers, item #1256b.

64. S.A. 1915, c. 14.

65. CEA, Emily Murphy's personal papers, Scrapbook 4, p. 21.

66. Edmonton Journal, Apr. 22, 1915, p. 3.

67. Ibid.

68. Woman's Century, Dec., 1915, vol.3, 6, p. 10.

69. Ibid.

70. PAA, Attorney General's papers, item #1106.

71. For a more detailed history of the United Farm Women of Alberta see, Robinson, supra note 9.

72. Ibid.

73. Constitutionally the U.F.W.A. was free to meet apart from the U.F.A. In practice, however, the two met in simultaneous but separate conventions. As a result U.F.W.A. members voted on U.F.A. resolutions while the men were excluded from voting on U.F.W.A. resolutions. This discrepancy was referred to the U.F.A. executive in 1920 whose decision reveals something of the true nature of the relationship between the two groups. Minutes of the executive meeting held in June of that year show that those present agreed that there was "no inconsistency" in voting practices since the U.F.W.A. was "regarded as a committee or Section of the U.F.A. proper", p. 57.

74. U.F.A. Annual Report, 1917, p. 215.

75. Ibid., 1916.

76. The following is from ibid., 1917, p. 316.

77. Ibid.

78. S.A. 1917, c. 14. Alberta was the second of the three prairie provinces to introduce homestead legislation. Saskatchewan passed its Homesteads Act in 1915 and Manitoba followed with a Dower Act in 1918. In British Columbia, common law dower, as modified by British statute in 1833, persisted until 1925 when it was abolished. In 1948 The Wife's Protection Act gave a married woman rights similar to those provided by homestead legislation but in order to be protected under the Act a married woman was required to file a caveat against the homestead. See Bowker, supra c. 1, n. 141, p. 501.

79. The analysis of Homestead legislation which appears here relies heavily on The Manitoba Law Reform Commission, "Report On An Examination Of 'The Dower Act'" (1984).

80. The following is from ibid., p. 160.

81. In Alberta the family home was protected against seizure under the Exemptions Act, R.S.A. 1922, c.95, which repealed C.O.N.W.T. 1898, c. 27. This provision dated back to a Territorial Ordinance of 1884.

82. S.A. 1917 c. 14, s. 3. It should be noted that homestead dower did not extend to the husband but existed solely for the protection of the wife. However, in 1948 the Act was revised to read "spouse". See S.A. c. 7, s. 2(b).

83. The following is from S.A. c. 7, s. 5.

84. Ibid., s. 7. An amendment in 1919 provided that an affidavit by the husband to the effect that he was unmarried could be substituted for the wife's certificate of acknowledgement. See S.A. c. 40, s. 3. Section 9b of this amendment stated that the wife's signed certificate of acknowledgement constituted consent to dispostion under the Act. By an earlier amendment the wife forfeited her rights under the Act when she was living apart from her husband "under circumstances disentitling her alimony". See S.A. (1918) c. 4, s. 4.

85. S.A. 1917 c. 14, s. 2(a) & (b).

86. The following is from PAA, Scrapbook Hansard (1917), p. 57.

87. Ibid.

88. Edwards, supra note 43.

89. Ibid.

90. PAA, Attorney General's papers, item #1106.

91. U.F.A. Annual Report, (1918) p. 25.

Notes to Chapter 3

1. PAA, Attorney General's papers, item #1107a.

2. Richard J. Evans, The Feminists (New York: Barnest Noble, 1979) describes the collapse of international feminism during the interwar years as a result of the "feminists' retreat from liberalism" which was "part of a general change in the nature of liberalism itself . . . away from individualism and towards a greater belief in state interventionist and collectivist solutions to social problems", p. 235.

3. Veronica Strong-Boag, "Canadian Feminism in the 1920s: The Case of Nellie McClung" in Frances and Palmer (*supra* ch. 2, n. 14), p. 478.

4. *Ibid*.

5. *Ibid*., p. 477.

6. *The National Council of Women of Canada: The Year Book 1917-18* (Toronto: Bryant Press, 1918), p. 13.

7. The following is from *ibid*.

8. Strong-Boag, *supra* introd., n. 7, p. 43, sees the women's club movement in Canada as "part of the great movement to increase 'the scale of human organization' within the modern community in order to deal with new social and economic problems". According to Doug Owram, "The Formation of a New Reform Elite, 1930 - 1935", n.p., this drive to organize peaked during the 1920s which he describes as "an era of clubs and associations", p. 164. In Alberta one of the most significant factors contributing to the growth of women's clubs and associations was the need to overcome isolation on the prairies. As Mrs. Rogers, a Past President of the Alberta Women's Institutes, so succinctly put it, "the need was mainly isolation - a place to get together a place where you could meet people". See Rasmussen et. al. *supra* c. 2, n. 1, p. 130.

9. To date there has been no investigation into the link between the women's club movement and organized feminism in Canada; however, in Alberta women's political organizations frequently developed out of women's literary and social clubs. For instance, Irene Parlby's home local of the United Farm Women of Alberta was originally the Alix Women's Social Club. Other organizations, like the Women's Institutes, whose primary purpose was the improvement of the condition of women in the home had active laws committees and supported legislative reforms

for women. Both the Next-Of-Kin Association and the War Widows Association founded during the war years joined the campaign for married women's property rights.

This pattern would seem to support the contention of Annette K. Baxter, Preface., The Club Woman As Feminist (New York: Holmes and Meier, 1980) that "whether dedicated to social reform or to self-improvement, women's clubs had in common their power to afford women a more complete and therefore a more authentic, self-expression", p. xii. In this sense, Baxter suggests, women's clubs served an important role as a "vehicle of entry into the main stream of public affairs", ibid, p. xi.

10. John Blue, Alberta Past and Present (Chicago: Pioneer Historical Publishing, 1924), p. 419.

11. Ibid.

12. The following is from Nellie L. McClung, The Stream Runs Fast (Toronto: T. Allen,, 1945), p. 185.

13. The following is from Nellie L. McClung, In Times Like These, introd. Veronica Strong-Boag (Toronto: University of Toronto Press, 1972), p. 24.

14. Elise Elliot Corbett, "Alberta Women In The 1920s", M.A. Thesis University of Calgary, 1977, ch. 1 discusses the legislative changes affecting women between 1920 and 1930 including improvements to the Mother's Allowance Act of 1919, the achievement of equal parental rights in 1921, and the right of women to serve as jurors in 1921. Greater protections were extended to female workers by amendements to the Shop and Factory Act of 1917, including an increased minimum wage and a forty-eight hour work week. By the end of the decade, divorce had been made available to both men and women on the same grounds, equal homesteading privileges only awaited the transfer of natural resources to the provinces, and following the successful outcome of the "Persons Case" in 1928, the Sex Disqualification (Removal) Act prohibited discrimination on the basis of sex alone in public office.

15. Women's Century, 7, 2, February, 1920, p. 10. According to the Attorney General's department, the wife had a right to dower as well as the right to her husband's entire estate, where there were no children and her husband had died without a will. However, in practice, the widow was forced to choose.

16. Overland v. Himelford [1920] 2 W.W.R. 481.

17. The facts of the case which appear here are taken from Choma v. Chemlyk [1918] W.W.R. 382.

18. The following is from ibid at 383.

19. The following is from ibid at 384.

20. The following is from ibid.

21. Professor D.P. Jones has pointed out the following possibilities to the author. In the first place, a declaration such as was sought by the Chomas is a discretionary remedy, and the court could have declined to grant the vendor such a declaration to set aside the transfer on the ground that he was not coming to the court "with clean hands". Secondly, this was a perfect case for Equity to issue an injunction in favour of the purchaser to prevent the vendor from bringing his action under the statute to have the sale declared null and void. Finally, the Court could perhaps have interpreted the Act merely to require consent by the dower spouse in fact, and not the completion of a particular form, thus, anticipating the Supreme Court of Canada's decision some sixty years later in Sensted v. Makus, [1977] 5 W.W.R. 731 (S.C.C.).

22. S.A. 1919, c. 40, s. 2.

23. The facts of the case which appear here are taken from [1920] 2 W.W.R. 481.

24. Ibid., at 489.

25. Ibid., at 490.

26. The following is from ibid.

27. The following is from ibid, at 488..

28. Ibid.

29. The facts of the case that appear here are taken from [1922] 2 W.W.R. 272.

30. The following is from ibid., at 274.

31. The facts of the case that appear here are taken from [1922] 1 W.W.R. 400.

32. [1922] 1 W.W.R. 397.

33. Ibid., at 401.

34. PAA, Attorney General's papers, item #1107a.

35. The following is from ibid.

36. The following is from ibid.

37. Ibid.

38. Ibid. For a further discussion of the cases relating to the wife's dower right as a vested or contingent interest see Bowker, supra c.2, n. 76.

39. PAA, Attorney General's papers, item #1107a.

40. Ibid., item #692.89.

41. The following is from ibid.

42. U.F.A. Annual Report (1919), p. 123.

43. Ibid.

44. Ibid.

45. Ibid.

46. Irene Parlby was the second woman to achieve cabinet rank in the British Empire. Mary Ellen Smith had been appointed to the cabinet of the government of British Columbia a few months earlier. The Alberta election of 1921 also saw the election of Nellie McClung as a member of the Liberal opposition and the defeat of Louise Crummy McKinney, one of the first women elected to a provincial legislature.

47. U.F.A. Annual Report (1923), p. 7.

48. Ibid.

49. S.A., 1926, c.9.

50. Ibid., s.2.

51. PAA, Attorney General's papers, item #70.426/1805.

52. Ibid., s.4(3).

53. Ibid., s.4(4).

54. National Council of Women of Canada Year Book, 1926 -27, p. 68.

55. CEA, Emily Murphy's personal papers, Emily Murphy, "Partnership In Marriage", manuscript, file #50.

56. Ibid.

53. Lillie Young McKinney, "Round Table Regarding Laws", Women's Century, May, 1921, p. 24.

58. Ibid.

59. PAA, Attorney General's papers, item 1256a.

60. _Ibid_., item #1106.

61. CEA, Emily Murphy's personal papers, file #11.

62. _Ibid_., file #25.

63. PAA, Attorney General's papers, item #1256b. See Appendix A for a further discussion of women's concerns and the impact of existing legislation.

64. Rasmussen et. al. _supra_, c. 2, n. 1, p. 156.

65. McKinney, "Round Table Concerning Laws" _supra_, n. 53, p. 21.

66. _Ibid_.

67. Murphy, "Partnership In Marriage", _supra_, n. 51.

68. The following is from _Ibid_.

69. U.F.A. _Annual Report_ (1919), p. 118.

70. _Ibid_.

71. _Ibid_.

72. _Ibid_.

73. _Ibid_.

74. _Calgary Herald_, January 21, 1920.

75. _Ibid_.

76. _Ibid_., January 24, 1920, p.11.

77. PAA, Premier's Papers, item #168A-170B.

78. The following is from _ibid_.

79. _O'Leary_ v. _O'Leary_ [1922] 3 W.W.R. 229.

80. _O'Leary_ v. _O'Leary_ [1923] 1 W.W.R. 501 at 505.

81. _Ibid_.

82. _Ibid_. This notion that the wife should be provided with a regular allowance was popular with the middle classes. It is interesting to note that, in an article published in the _Canadian Home Journal_, December, 1926, entitled "Why Do Wives Leave Home?", Emily Murphy pointed to the lack of

the wife's "pin-money" as one of the significant factors contributing to marriage breakdown. While serving on the Alberta court in 1917, she found one married man guilty of being "a very stingy man" and ordered him to provide his wife with a set of false teeth and "pocket money . . . [an] allowance, to spend on shows, ice cream" or any way she pleased. See CEA, Emily Murphy's personal papers, file #3.

83. *O'Leary* v. *O'Leary* [1923] 1 W.W.R. 501 at 505.

84. *Ibid*.

85. *Ibid*., at 506.

86. *O'Leary* v. *O'Leary* [1922] 3 W.W.R. 229.

87. *O'Leary* v. *O'Leary* [1923] 1 W.W.R. 501.

88. *Ibid*.

89. *Ibid*., at 514.

90. *Ibid*., at 510.

91. The following is from *ibid*., at 502.

92. *Ibid*.

93. *Ibid*., at 528.

94. *O'Leary* v. *O'Leary* [1924] 1 W.W.R. 619.

95. PAA, Attorney General's papers, item #1107a.

96. *Ibid*.

97. *Ibid*.

98. *Ibid*.

99. PAA, Premier's papers, item #168A-170B.

100. PAA, Attorney General's papers, item #1108.

101. *Ibid*.

102. CEA, Emily Murphy's personal papers, Murphy, "Partnership In Marriage", *supra* n. 51, p. 3.

103. *Ibid*.

104. PPA, Attorney General's papers, item #1107a.

105. Ibid.

106. Ibid.

107. The following is from CEA, Emily Murphy's personal papers, file #3.

108. PAA, Attorney General's papers, item #1106.

109. PAA, Attorney General's papers, item #1107a.

110. Ibid.

111. Ibid., item #1108.

112. Ibid.

113. Ibid.

114. Journals of the Legislative Assemby of the Province of Alberta, 22 (1925) p. 7.

Notes to Chapter 4

1. CEA, Emily Murphy's personal papers, supra c. 3, n. 51, p. 7.

2. As H.R. Hahlo, "Matrimonial Property Regimes: Yesterday, Today And Tomorrow" 11 Osgoode Hall L. J. (1973) 455 at 460, points out, "[c]ommunity, universal or partial, remained the prevalent matrimonial property regime in most Western European countries until well into the twentieth century". Under the Code Napoleon, introduced into Quebec in 1866, all three estates were "administered by the husband, who was the 'chef' of the family. He was not, however, permitted to act in fraud of his wife or to make gifts of land or movables of value to third parties. Although the wife herself could alienate, burden or otherwise dispose of her separate goods, she required her husband's authorization for the purpose . . . . French law allowed intending spouses to vary or exclude the legal regime by marriage covenant [contract or, in English law, marriage settlement], entered into before the marriage. They could choose one of several ready-made systems, from complete separation of goods to universal community of property, or adopt a regime of their own design". See also L.E. Beaulieu, "Community of Property In The Law Of Quebec" 17 Can. Bar Review (1939) 486. For a further discussion of community of property laws see Alberta Institute of Law Research and Reform Report on Matrimonial Property (1975).

3. Parlby's community of property bill is reproduced in part in Rasmussen et al., supra ch. 2 n. 1, p. 170.

4. Ibid.

5. PAA, Attorney General's papers, item #1, "Report of Advisory Committee on Community of Property", p. 4.

6. Ibid.

7. CEA, Emily Murphy's personal papers, file #33, Murphy, "About Marriage Settlements", manuscript, p. 2.

8. PAA, Attorney General's paper's, item #1108.

9. Ibid.

10. The biographical information concerning Irene Parlby which appears here has been taken from Jean Bannerman, Leading Ladies of Canada (Belleville, Ontario, Mike Publishing, 1977) and Barbara Villy Cormack, Perennials and Politics, n.p., n.d.

11. The article quoted here was written by Parlby and published in the Alberta Labour Annual, September 15, 1925. It is reproduced in part in Rasmussen et al., supra ch. 2, n. 1, p.170.

12. Ibid.

13. Ibid.

14. Ibid.

15. Murphy, "Partnersip in Marriage", supra ch. 3, n. 51, pp. 8-9.

16. Murphy, "About Marriage Settlements", supra n. 7, p. 5. Although Murphy does not elaborate concerning the specific objections raised by the N.C.W.C., the evidence suggests that local council members favoured stengthening The Dower Act rather than the introduction of a completely new property regime.

17. Ibid.

18. Ibid.

19. Ibid.

20. Rasmussen et al., supra ch. 2, n. 1, p. 170.

21. PAA, Premier's Papers (1925).

22. Calgary Herald, May 12, 1925.

23. Ibid., July 7, 1941, p. 10.

24. Ibid.

25. Ibid.

26. CEA, Emily Murphy, personal papers, scrapbook #4, p. 197.

27. Ibid.

28. Calgary Herald, September 27, 1956, p 1.

29. Ibid.

30. Ibid.

31. Ibid.

32. Murphy, "About Marriage Settlements", supra n. 7, p. 3.

33. "Report of Advisory Committee on Community of Property Rights", supra n. 5, p 5.

34. Ibid.

35. Ibid.

36. Ibid.

37. Murphy, "About Marriage Settlements", supra n.7, p. 3.

38. "Report of Advisory Committee on Community of Property Rights", supra n. 5, pp. 10-11.

39. Ibid., p. 5.

40. Ibid., p. 7.

41. Ibid.

42. Ibid., p. 5.

43. Ibid.

44. Ibid., p. 8.

45. Ibid.

46. Ibid.

47. Ibid., p. 9.

48. Ibid., p. 6.

49. Ibid.

50. Ibid., p. 7.

51. Ibid., p. 6.

52. S.A. 1978 c. 22. The Alberta Act, which came into force January 1, 1979, followed similar legislation in New Zealand, The United Kingdom, Australia, and the Canadian jurisdictions of British Columbia, Saskatchewan, the Northwest Territories, and Ontario. See Margaret A. Shone, "Principles of Matrimonial Property Sharing: Alberta's New Act" 17, 2 Alta. L. R. [1979] 143.

53. [1975] 1 S.C.R. 423; [1974] 1 W.W.R. 361.

54. Shone, supra n. 52, at 145.

55. Ibid., at 146.

56. Ibid.

57. Ibid. Iris Murdock was granted a judicial separation and

awarded alimony of $200.00 per month. See the Alberta Institute of Law Research and Reform Working Paper Matrimonial Property (1974) for a review of this and other cases dealing with matrimonial property.

58. PAA, Attorney General's papers, item #1107a.

59. *Ibid*.

60. Murphy, "Parnership In Marriage", *supra* ch. 3, n. 51, p.8.

61. PAA, Premier's Papers, December 31, 1928. This demand was finally met by the revised Act of 1948 which also extended dower rights to the husband. See [1948] S.A., c. 7, s. 24.

Notes to Conclusion

1. PAA, Attorney General's papers, itel #1107a.
2. Rasmussen et. al. supra c. 2, n. 1, p. 156.
3. Ibid.
4. Freeman, supra c. 1, n. 2.

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Appendix A

Extracts from letters filed with the Attorney General's paper's -- PAA -- which are representative of the kinds of complaints received from women between 1916 and 1926 with comments by the author concerning possible remedies under the law as it existed at the time.*

Gertie Palmer, Eyremare, Alberta (1916):
Palmer had received "a mare from [her] parents and raised a herd of horses from this mare". She was living with her husband on "his homestead" and allowed her husband to use her horses "to do his work but most of the time [she hired] them pastured at other places". Palmer's horses bore her own "registered brand" and she wanted to know if "the sheriff [could] seize them and sell them" to satisfy her husband's debts.

Comments:
If Palmer could have proved ownership, her horses could not have been seized and sold to satisfy her husband's debts since they were her separate personal property.

Lena Phimmer, Elk Point, Alberta (1916):
Phimmer had filed a caveat to protect her interest in her husband's homestead as provided by the Married Woman's Home Protection Act, 1915, "whereupon [her] husband became angry and left". He subsequently "sold a small building" on the homestead. Phimmer was using the building as a granary and wished to know if she could prevent the purchaser from taking possession of it.

Comments:
The husband's reaction to his wife filing a caveat is an example of the limitations of legislation which requires a positive action which might be interpreted as a declaration of war as the husband clearly did in this case. Although Phimmer had taken the necessary action in order to be protected by the Married Women's Home Protection Act, no remedy was available to her in this case if the building sold by her husband was not her home since this was all that was protected under the Act.

Mrs. Fred C. Clark, Dewberry, Alberta (1916):
Clark had "deserted" his wife and "3 children" and was "threatening to sue for divorce". His wife wanted to know what right she had in the homestead since she had contributed "$1,000.00" to the purchase price although she had "neither note nor security" to prove it.

Comment:
In this case title was presumably in the name of the husband. Mrs. Clark could have filed a caveat to prevent the sale of the homestead in order to carry on living in the house but this would not protect her livelihood. If she could have proved that she had loaned money to her husband in order to purchase the homestead she might have had a claim to the land arising from a resulting or constructive trust.

Mrs. D.B. Tucker, Millicent, Alberta (1917):
Tucker's homestead was about to be sold by the "Canadian Mortgage Association of Edmonton" as her husband had failed to pay the monthly installment owing. She wished to know if she would receive a portion of the proceeds from the forced sale should it proceed.

Comments:
Since there was a mortgage on the homestead to which Tucker had presumably consented, she would not have been able to prevent the foreclosure if she had given her dower consent to the mortgage upon which the foreclosure was based. A portion of the proceeds from the forced sale would be protected under the Exemptions Act; however, there was nothing in the Act guaranteeing the wife any part of them. She had no remedy in law except maintenance following divorce or judicial separation.

Jessie O. Scott, re: her sister Mrs. John M. Spurling, Elnora, Alberta (1917):
After fourteen years of marriage during which Spurling had worked with her husband on their homestead doing "a man's work in the fields", he was threatening to leave her in order to "take a younger wife". Scott wanted to know what claim her sister had in her "husband's homestead".

Comments:
Under the Dower Act, Mrs. Spurling had a right to occupy a quarter section of the homestead but her labour did not give her a property right. If there were grounds for divorce, she could sue for maintenance.

Robert Mackenzie re: his sister Mrs. Jessie Swan, Chauvin, Alberta (1919):
Swan's husband was threatening to "sell out" and leave his wife of twenty years "in the lurch". "The wife worked hard, denying herself all the pleasures that others enjoyed to help [her husband] get along". Mackenzie wanted to know if there was anything in the law which would quarantee his sister "a just share of the fruits of her labour?".

Comments:
The simple answer to Mackenzie's question is no. As in Murdoch v. Murdoch, prior to the Matrimonial Property Act (1978), just working the land did not by itself give the wife a property right. If there were grounds for divorce, Swan could sue for maintenance.

Mrs. B. Murray, Murrayville Farm, Alberta (1917):
Murray wished to know if she could place a caveat on the title to her husband's homestead to prevent him from selling it, since she was "getting old and [did] not care to move any more".

Comments:
The caveat mentioned here is probably a reference to the Married Women's Home Protection Act which was repealed by The Dower Act. The Dower Act would have applied to prevent the sale of the homestead without Murray having to take the positive step of filing a caveat; however, it was held in Choma v. Chmelyk in 1918, that the wife's rights under the Act were contingent on her surviving her husband. Thus, at that time, there would have been considerable doubt as to what her right in this situation might have been.

Mrs. Bessie Carathers, Stocks, Alberta (1919):
Carathers was living apart from her husband "on account of domestic troubles" and sought the "full protection" provided by The Dower Act for herself and her child.

Comments:
If Carathers was living apart from her husband "in such a way as to disentitle her to alimony" she would also automatically have forfeited her right to dower (as stipulated by the 1919 amendment to the Act). If she had been forced out by her husband's cruelty, dower would apply; however, it may not have been of any practical use if wife and husband were unable to live together. If there were grounds for divorce she could

have sued for alimony. The only right her child would have had would be to maintenance, but there remained the question as to whether payment could have been enforced.

Clara Stromstad, Wunborne, Alberta, (1920):
Stromstad sought advice as to her rights since she had been forced to sign a lease agreement forfeiting her dower interest. "At Mr. Rollis' office in Three Hills [she] objected to the [lease], but [her] husband and everybody present [was] in favour of it and [her] husband was so nervous and worked up that to soothe him and avoid a scene [she] signed."

Comments:
If Stromstad could have proved that she had been forced to sign the agreement against her will, (a case which would turn on the credibility of the witnesses) the lease may have been null and void under The Dower Act. Secondly, if it was not signed separate and apart from her husband as was stipulated in the Act, she might have succeeded in avoiding the lease as in Reddick v. Pearson [1948] 2 W.W.R. 1144 where the husband was present in the room when the wife signed the consent form. The situation described by Stromstad does show that the ability to intimidate must not be underestimated.

Mrs. Mike Dieringer, Ballantine, Alberta (1925):
Dieringer sought advice because her husband was threatening to sell the family homestead and it was "all the home [she] had and $730.00 of [her] own money [had] gone into the place as well as 15 years hard work."

Comments:
Once again, as Murdoch v. Murdoch demonstrated, "hard work" alone did not give the wife a property right in the homestead. Her investment, if proven, might have given rise to a constructive or resulting trust; however, it would have been difficult to quantify the amount of her claim.

Mrs. A. Woolridge, Beaver Crossing, Alberta (1926):
Woolridge wrote to the Attorney General "in regards to women's rights." Asking if she could "hold [her] right on land [which was] mortgaged before women's rights came in effect? The Mortgage Company [had] sold the homestead [her] husband filed on in 1910 and [she] never signed any papers but didn't get nothing out of it".

Comments:

Of course, there may have been "nothing out of it" for either party. If there was a net amount out of the sale, the question then is would she have been entitled to any of it? If the husband had assumed an existing mortgage registered against the homestead lands before he purchased them, her dower right would come second to the right of the mortgagee. If the husband had purchased the land and then placed a mortgage on it to which Woolridge had consented, she would have no dower right. If she had not consented and therefore her dower right existed, she still would have no claim to the proceeds of the sale although she may have had a claim against the mortgage company or her husband for fraud.

This is precisely the situation that the amendment proposed by the Advisory Committee on Married Women's Property Rights in 1928 sought to address. If the committee's recommendation had been put into effect, both spouses would have received one-half each of the surplus following the forced sale of a homestead.

*The comments that appear here have been prepared based on discussions with Professor D.P. Jones; however, any legal errors which may appear are solely the responsibility of the author.